No. 75-1262

In the Supreme Court of the United States

OCTOBER TERM, 1975

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

COUNTY OF FRESNO

UNITED STATES OF AMERICA, ET AL., APPELLANTS

v.

COUNTY OF TUOLUMNE

ON APPEALS FROM THE CALIFORNIA COURT OF APPEAL, FIFTH APPELLATE DISTRICT

JURISDICTIONAL STATEMENT

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OPINIONS BELOW

The findings of fact, conclusions of law, and memorandum of decision of the California Superior Court in *United States of America, et al.* v. *County of Fresno* (App. A, *infra*, pp. 1a-14a) are not offi-

cially reported. The opinion of the California Court of Appeal, Fifth Appellate District (App. B, *infra*, pp. 61a-71a) is reported at 50 Cal. App. 3d 633.

The findings of fact, conclusions of law, and memorandum of opinion of the California Superior Court in *United States of America, et al.* v. *County of Tuolumne* (App. A, *infra*, pp. 19a-56a) are not reported. The opinion of the California Court of Appeal, Fifth Appellate District, in *United States of America, et al.* v. *County of Tuolumne* (App. B, *infra*, pp. 72a-73a) is not reported.

JURISDICTION

The judgments of the California Court of Appeal in these cases (App. B, *infra*, pp. 71a, 73a; App. C, *infra*, pp. 74a-77a) were entered on August 13, 1975. The California Supreme Court denied timely petitions for hearing on October 9, 1975 (App. D, *infra*, pp. 78a-79a). Notices of appeal to this Court were filed on January 6, 1976 (App. E, *infra*, pp. 80a-83a).[1] By order dated December 30, 1975, the Chief Justice extended the time for docketing these appeals to and including March 7, 1976 (a Sunday).

The California Court of Appeal held that the imposition of a state possessory interest tax upon the

[1] Notices of appeal were filed in both the California Court of Appeal (App. E, *infra*, pp. 80a-83a) and in the California Superior Courts (App. F, *infra*, pp. 84a-87a) because of uncertainty as to the location of the record. In the *County of Fresno* case, the notice of appeal was filed in the Superior Court on January 7, 1976.

occupancy by employees of the United States Forest Service of government-provided housing quarters located in national forests did not violate the Supremacy Clause of the United States Constitution. The jurisdiction of this Court is conferred by 28 U.S.C. 1257(2), which authorizes a direct appeal to this Court from the final judgment by the highest court of a state in which a decision could be had where the constitutionality of a state statute is drawn into question and the decision is in favor of its validity. See, *e.g.*, *Agricultural Bank* v. *Tax Commission*, 392 U.S. 339; *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant provisions of Article VI of the United States Constitution, 5 U.S.C. 5911, 16 U.S.C. 500, Sections 102-104, 107 and 201 of the California Revenue and Taxation Code (West 1970), and Section 4654 of the California Public Resources Code (West 1972) are set forth in App. G, *infra*, pp. 88a-93a.

QUESTION PRESENTED

Whether the imposition of the California annual tax on possessory interests in improvements on tax-exempt land based upon the value of the occupancy rights of employees of the United States Forest Service in housing quarters which are owned by the federal government and assigned to them as a condition of their employment violates the immunity of

the United States from state taxation as provided by the Supremacy Clause of the Constitution.

STATEMENT

Pursuant to its authority under 16 U.S.C. 471 and 472, the United States Department of Agriculture is charged with the responsibility of executing the laws affecting the public lands reserved as national forests. Pursuant to 16 U.S.C. 480, the civil and criminal jurisdiction of the states within such national forests is not affected. In order to protect and administer the national forests, the Forest Service of the Department of Agriculture has constructed housing quarters within the national forests which it requires to be occupied by a Forest Service employee. The assignment of federal employees to such housing quarters is authorized by 5 U.S.C. 5911(b) "when conditions of employment or of availability of quarters warrant the action" (App. A, *infra*, pp. 1a, 3a, 9a-10a, 24a, 31a, 43a).

The individual appellants are Forest Service employees who were assigned as a condition of their employment to occupy housing quarters in national forests located in the Counties of Fresno and Tuolumne in California. The housing quarters in question range from one-bedroom to three-bedroom dwelling units and many of them are in remote areas of the national forests. Because there are more Forest Service employees than such housing quarters, not every employee is assigned to occupy these facilities. However, some employees are assigned to

these housing quarters because of the nature of their duties (*e.g.*, fire surveillance). Other employees are required to occupy these quarters because of the Forest Service's policy that each dwelling must be occupied. Thus, the employees have no freedom of choice in connection with their housing assignments (App. A, *infra*, pp. 1a-3a, 5a, 9a, 11a, 25a, 31a, 43a, 50a, 52a; App. B, *infra*, p. 63a).

Those assignments were made unilaterally by the Forest Service solely on the basis of its needs in accordance with the criteria set forth in 5 U.S.C. 5911, Bureau of Budget Circular A-45, and the Forest Service Manual, together with its regional supplement. The Forest Service employees occupying such quarters were charged a fee in accordance with an official schedule and based upon the number of days of occupancy during the preceding pay period. The fee was withheld from the employees' bi-weekly pay checks (App. A, *infra*, pp. 1a-5a, 11a-12a, 27a-31a, 43a-45a, 52a-53a; App. B, *infra*, p. 63a).

The privacy of the Forest Service employees occupying the housing quarters was severely diminished. Thus, for example, the Forest Service retained full rights of access to these dwellings. The units were locked by Forest Service locks, which could be opened by a single Forest Service master key to which all Forest Service employees had access. Forest Service officers were permitted to enter these quarters at any time and were at liberty to station additional personnel in the quarters if conditions made it neces-

sary. The public was invited to visit Forest Service employees at their housing quarters when other Forest Service facilities were closed. The employees had no fixed right of occupancy to the particular quarters they occupied (App. A, *infra*, pp. 2a, 4a, 11a, 32a-35a, 38a-39a, 44a, 53a; App. B, *infra*, pp. 63a-64a).

There was no written lease or other document between the employees occupying such quarters and the Forest Service. The employees' occupancy was immediately terminable at any time without any prior notice by the Forest Service. The employees had no right to sublet or to assign their right of occupancy and were permitted to make repairs, alterations, or modifications to the units only with the consent of their superiors. Pursuant to Section 0.735-11(p) of the Forest Service Regulations (7 C.F.R. (1971)), the employees were prohibited from using the quarters "for other than officially approved purposes" (App. A, *infra*, pp. 2a, 4a-5a, 11a-12a, 31a-32a, 35a, 37a-38a, 45a, 52a-53a; App. B, *infra*, p. 63a).

Under Sections 103, 104, 107 and 201 of the California Revenue and Taxation Code, an annual tax upon possessory interests in improvements on tax-exempt land is imposed. Respondents determined that the housing quarters occupied by the individual appellants in connection with their federal employment were possessory interests in improvements on tax-exempt land and were subject to the tax. Respondents computed the value of the possessory interests in the improvements by computing the discounted value of the rent of a comparable dwelling exclusive of land and the value of the reversionary interest after the estimated period of occupancy. The respondents excluded from their calculations the value of office or other governmental areas that were open to the public and took into account the risk of termination of occupancy. After deriving two separate values based upon the capitalization of rent and the valuation of the property less the reversionary interest, a final appraisal was made in accordance with the judgment of the appraiser (Tr. 179-188;[2] App. A, *infra*, pp. 2a, 10a, 51a; App. B, *infra*, p. 62a).

The Forest Service employees paid the assessed tax[3] in 1967 under protest and filed applications for refund, which were denied by respondents' boards of supervisors sitting as boards of equalizations (App. A, *infra*, pp. 2a, 10a-11a, 25a, 51a). In the first of these refund suits in which the individual appellants were joined by the United States, the Superior Court of Fresno County held that the Forest Service employees had no possessory interests

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[2] This reference is to the transcript of the trial in the *County of Fresno* case. For a description of the valuation procedures used by the County of Tuolumne, see App. A, *infra*, pp. 40a-42a.

[3] The taxes imposed on the individual appellants ranged from $3.03 to $91.31 per year (App. A, *infra*, pp. 10a, 15a-18a, 21a, 25a, 51a, 58a-60a).

subject to California tax. The court further held that, even assuming that they had such a taxable interest, the tax interfered in the relationship between the Forest Service and its employees and violated the constitutional immunity of the United States and its agents from state taxation. The court also ruled that the tax unconstitutionally discriminated against the United States and its employees, and was a forbidden double tax upon the possessory interests in federal forests under Section 102 of the California Revenue and Taxation Code because the United States made payments in lieu of taxes under 16 U.S.C. 500 (App. A, *infra*, pp. 4a, 6a-7a, 12a-14a). In the second case, the Superior Court of Tuolumne County held that the individual appellants had no possessory interests under California law and did not reach the other issues presented (App. A, *infra*, pp. 48a, 53a-55a).

The California Court of Appeal reversed in both cases (App. B, *infra*, pp. 61a-73a). It held that under California law the Forest Service employees had taxable possessory interests in the government housing quarters assigned to them and that the imposition of the tax did not violate the immunity of the United States against state taxation. In the court's view, "[a] possessory interest assessment is not made against the government or government property; the assessment is against the private citizen, and it is the private citizen's usufructuary interest in the government land that is being taxed" (App. B, *infra*, p. 68a).

The court of appeal also concluded that the federal government's payments under 16 U.S.C. 500 were not in-lieu-of tax payments. Accordingly, it rejected the argument that the possessory interest tax imposed double taxation prohibited by Section 102 of the California Revenue and Taxation Code (App. B, *infra*, pp. 69a-70a).

Finally, the court of appeal concluded that the tax did not discriminate against the United States. Although comparable possessory interests in state forests were not subject to tax, the court relied upon the fact that the counties receive payments in lieu of taxes pursuant to Section 4654 of the California Public Resources Code. Since the court concluded that the federal government's payments under 16 U.S.C. 500 were not in lieu of taxes, it found the California tax on possessory interests in federal forests did not discriminate against the United States (App. B, *infra*, pp. 70a-71a).

THE QUESTION IS SUBSTANTIAL

In holding that a state tax could be imposed upon the occupancy rights of employees of the United States Forest Service in housing quarters owned by the federal government and assigned to them as a condition of their employment, the California Court of Appeal has erroneously narrowed the immunity of the United States from state taxation as established by the decisions of this Court. The resolution of this issue has significant practical importance not only to employees of the United States Forest

Service stationed in the 15 national forests located in California, but also to their counterparts who are required to occupy similar housing facilities in California provided by the National Park Service, the Bureau of Indian Affairs, and the Bureau of Reclamation of the Department of Interior, and the Departments of the Army, Navy, and Air Force. Moreover, if the decision below stands, it is likely that other states will follow California's lead and attempt to tax the value of possessory interests of a large number of military and civilian federal employees who occupy federally owned housing quarters assigned to them in connection with their employment.

1. Only last Term in *United States* v. *Mississippi Tax Comm'n*, 421 U.S. 599, 612, this Court reaffirmed the doctrine first announced by Chief Justice Marshall in *M'Culloch* v. *Maryland*, 4 Wheat. 316, that the federal government is immune from state taxation. "[U]nshaken, rarely questioned * * * is the principle that possessions, institutions, and activities of the Federal Government itself in the absence of express congressional consent are not subject to any form of state taxation." *United States* v. *County of Allegheny*, 322 U.S. 174, 177. See also *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 117-118. Federal tax immunity is "the unavoidable consequence of that supremacy which the constitution has declared" (*M'Culloch* v. *Maryland*, *supra*, 4 Wheat. at 436).

The California tax upon the possessory interests

of Forest Service employees in housing quarters assigned to them by the federal government as a condition of their employment is a levy upon the activities of the United States. It is beyond question that California could not subject the United States to a real estate tax upon the value of its ownership interest in the housing quarters located within the national forests. While the possessory interests of the Forest Service employees in the housing units assigned to them is conceptually distinct from the ownership interest of the United States, their occupancy of such quarters was for the sole purpose of discharging their governmental function of protecting the national forests. Thus, the fact that they paid rent and perhaps derived some incidental personal benefits from their occupancy does not detract from the fact that their presence in such housing was primarily for the benefit of the United States in furtherance of the activities of the federal government. A state tax on such an activity violates the Supremacy Clause of the Constitution. See *United States* v. *Rickert*, 188 U.S. 432.

Although the court of appeal acknowledged the force of the federal immunity doctrine, it held that it was inapplicable to the tax at issue because "[a] possessory interest assessment is not made against the government or government property; the assessment is against the private citizen, and it is the private citizen's usufructuary interest in the government land that is being taxed" (App. B, *infra*, p. 68a). In so concluding, the court of appeal relied

upon *City of Detroit* v. *Murray Corp.*, 355 U.S. 489; *United States* v. *Township of Muskegon*, 355 U.S. 484; and *United States* v. *City of Detroit*, 355 U.S. 466. But those cases involved the entirely distinguishable situation of a state tax upon a private contractor's use of federally owned property in connection with its own commercial activities. Under those circumstances, the tax was upheld because the private contractor was not deemed to be an instrumentality of the United States. However, in *Township of Muskegon*, the Court explained the basis of those decisions in the following terms, which are pointedly applicable here (355 U.S. at 486):

> The case might well be different if the Government had reserved such control over the activities and financial gain of [the private contractor] that it could properly be called a "servant" of the United States in agency terms. But here [the contractor] was not so assimilated by the Government as to become one of its constituent parts. It was free within broad limits to use the property as it thought advantageous and convenient in performing its contracts and maximizing its profits from them.

There can be no doubt in this case that the Forest Service employees were servants of the United States in the fullest sense of that word, since their activities were under the complete supervision of their federal employer. Moreover, their occupancy of the housing quarters was subject to a pervasive system of governmental controls designed to further the protection of the national forests. Their assignment to their

dwellings was required as a condition of their employment and they had no right to remain there when the federal government so directed. In this sense, the deployment of Forest Service personnel to such quarters is directly analogous to the assignment policies of the armed forces. Accordingly, the Forest Service employees' use of the housing quarters was a governmental activity that cannot be subjected to state taxation.

2. The California tax is likewise unconstitutional because it discriminates against the federal government and its employees. Apart from the fundamental constitutional doctrine that the federal government is immune from state taxation, it is an equally well settled corollary of that rule that a state may not discriminate against the federal government. See, *e.g.*, *Phillips Co.* v. *Dumas School District*, 361 U.S. 376, 385-387; *Moses Lake Homes* v. *Grant County*, 365 U.S. 744, 751; *City of Detroit* v. *Murray Corp.*, 355 U.S. 489. As the Court stated in *United States* v. *City of Detroit*, *supra*, 355 U.S. at 473: "It still remains true, as it has from the beginning, that a tax may be invalid even though it does not fall directly on the United States if it operates so as to discriminate against the Government or those with whom it deals."

Here, the California tax unfairly discriminates against the federal government because it is not imposed upon possessory interests in state forests. This disparity in treatment between comparable interests in state and federal forests works an unconstitu-

tional discrimination against the federal government since "it does not seem too much to require that the State treat those who deal with the Government as well as it treats those with whom it deals itself" (*Phillips Co.* v. *Dumas School District*, *supra*, 361 U.S. at 385).

The court of appeal attempted to justify the discriminatory impact of the California tax on the ground that the State of California compensates its counties for the loss of tax revenue with respect to state forests by making in-lieu-of tax payments to the counties pursuant to Section 4654 of the California Public Resources Code (App. B, *infra*, p. 91a). But the federal government has made similar in-lieu-of-tax payments to the states since 1906 for the benefit of the public schools and public roads of the counties in which national forests are situated. See 16 U.S.C. 500, Appendix G, *infra*, p. 88a. The possessory interests in both state and federal forests in California are therefore on a comparable economic footing. Thus, if the state does not tax possessory interests in its own forests, it cannot do so with respect to those located in national forests.[4]

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[4] The court of appeal's rejection of the argument that the payments made by the United States under 16 U.S.C. 500 were in lieu of taxes (App. B, *infra*, pp. 69a-70a) is explicitly refuted by the pertinent legislative history of that statute. See H.R. Rep. No. 4979, 59th Cong., 1st Sess. (1906); See H.R. Rep. No. 295, 63d Cong., 2d Sess. 55 (1914); 40 Cong. Rec. 7355 (1906); 42 Cong. Rec. 5925, 6058-6059, 6061 (1908).

International Paper Co. v. *County of Siskiyou*, 515 F.2d 285 (C.A. 9), upon which the court of appeal relied (App. B, *infra*, pp. 70a-71a), is distinguishable. There, the Ninth Circuit upheld a California county tax upon a private possessory interest in standing timber located in a national forest. Here, however, the question is whether the state tax can be imposed upon such a possessory interest of a person in his capacity as a federal employee. While the court in *International Paper Co.* rejected the argument that the tax was discriminatory because similar interests in state forests were not taxable, it did so on the ground that the purchasers of timber interests in state forests bore the burden of taxation indirectly through higher prices (see 515 F.2d at 289). Finally, the Ninth Circuit's statement that federal payments under 16 U.S.C. 500 are not in lieu of state taxes was not directed to the discrimination argument advanced in that case but only to buttress its conclusion, to which we take no exception, that 16 U.S.C. 500 does not of itself prevent state taxation of private possessory interests in national forests. See 16 U.S.C. 480.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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APPENDIX A

Filed November 2, 1972

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

No. 136452 Dept. 1

UNITED STATES OF AMERICA, ET AL., PLAINTIFFS

vs.

COUNTY OF FRESNO, DEFENDANT

MEMORANDUM OF DECISION

A trial de novo is permitted in this case on the primary issues not involving valuation because on those issues a trial de novo is a matter of right. *McCaslin* v. *DeCamp*, 1967, 248 C.A.2d 13 and *Bd. of Supervisors* v. *Archer*, 1971, 18 C.A.3d 717. In view of the Court's Intended Decision, the question of whether a trial de novo as to valuation is proper need not be decided.

The essential facts of this case are as follows:

Plaintiff United States of America, through its Department of Agriculture, Forest Service, owns certain dwellings located in the Sierra and Sequoia National Forests, within the County of Fresno. The individual plaintiffs are assigned, by the Forest Supervisors, to occupy said dwellings as an incident of their employment and for the benefit of the Forest Service. See Title 5 U.S.C. Sec. 5911. They do not have a freedom of choice of premises in connection

with said assignments. By reason of their occupancy of said dwellings, an amount of money is thereafter withheld from their bi-weekly paychecks, in accordance with calculations made under Forest Service regulations, establishing the reasonable rental value to the employee. Their occupancy of the dwellings is subject to the determination of the Forest Supervisor as to how the most efficient use of the dwellings can be made, and individual employees are subject to directions to vacate the premises without notice. The premises are, in many instances, located in relatively inaccessible areas, since they are designed for such purposes as fire spotting, etc. They are locked by Forest Service locks, which can be opened by a single Forest Service master key, which all Forest Service employees have. Forest Service employees occupying such dwellings are required, upon request, to permit Forest Service officers to enter the dwellings. No written lease or other document exists between the individual plaintiff-employee and the Forest Service. Defendant's assessor determined that each individual plaintiff-employee had a taxable possessory interest as a result of his limited possession and/or use of the property. Taxes were thereupon collected under protest from the individual plaintiffs in the year 1967. Thereupon, this action was filed to recover those taxes.

Two of the above facts may create sometimes subtle, but nevertheless important, distinctions, vis-a-vis the many cases cited by both parties in their memorandums and briefs. Those two facts are that

the individual plaintiffs are employees of the federal government, not engaged in commercial activities on the subject property for their own respective benefiits, and that none of them had any right of possession or use, exclusively or otherwise, as against the federal government.

The case of *McCaslin* is the only cited case involving a factual situation that comes close to the subject case. However, there the court found that the plaintiff-employee of the public entity had a month-to-month tenancy which did in fact give him the right to exclusive possession, even against the public owner. In fact, the plaintiff-employee had, in his original Complaint, alleged under oath that he had an interest in the residence in question as a tenant on a month-to-month basis. The Court finds that this is not the situation in the case at bench.

Title 5 U.S.C. Sec. 5911(b), (c), (e), (f) set forth the authority for requiring or permitting federal employees to live in housing owned by the federal government. Pursuant to this section, plaintiffs were assigned to their respective government housing. The evidence showed that in certain cases a plaintiff was required to live in the housing assigned, and then required to pay rental on a daily basis through deductions from his bi-weekly paychecks after the occupancy and use had taken place. He had no choice but to comply with these requirements because the government, through its Forest Service, unilaterally determined that it was in the interests of the government to so assign him, and that the

quarters assigned had a value to the employee equal to the amount deducted from his subsequent paychecks. (Rent is also deducted in the same manner for plaintiffs who are not actually required to live in the government housing.)

If we assume the definitions set out in Title 18 of the California Administrative Code, Secs. 21, et seq. (not adopted until 1971), are applicable in this case, the defendants would still not be sufficiently justified in their position. This is true because, as plaintiffs point out, the Forest Service has "full access" to the quarters involved in this case. Indeed, there are no provisions contained in any of plaintiffs' exhibits in evidence wherein the employees are given any rights or privileges of exclusive possession or use. All provisions concerning the employees' occupancy and use are restrictive and make it clear that the federal government commits itself to nothing. The occupancy and use of the quarters by the employee-plaintiffs is completely subservient to the rights of the Forest Service and can only be called a license, terminable at will by the Forest Service without notice to the employee. This is the relationship the U.S. Government has clearly created. The State cannot alter the relationship without running afoul of the Supremacy Clause of the U.S. Constitution by interfering with the relationship between the U.S. and its employees. In this regard, it would also appear that, under the facts of this case, the Act for Admission of the State of California to the Union would be violated by imposition of the subject

tax for the reason that it would constitute an interference with the primary disposition of public lands by the U.S. to its own employees for governmental purposes.

Plaintiffs' exhibit in evidence make it clear that government purposes alone are the factors which determine when an employee can occupy the dwellings. The determination is made unilaterally by the government, acting through its agents, and the employee has no right to participation in the decision and no right by legal means or otherwise to even postpone the effectiveness of the governmental decision. He can be, and the evidence shows that he has been, dispossessed without notice when the government determines that an emergency such as fire, requires the use of the dwelling for purposes other than his occupancy. When this happens, the small rent payable is reduced proportionately on the basis of the number of days the employee actually occupied the dwelling during the preceeding two-week period. This deduction does not amount to a refund because the rents are not paid in advance as is customary in a landlord-tenant situation.

The Court is not unmindful of the fact that some or all of the plaintiff-employees may very well receive some benefit from their occupancy of the government houses, but this alone is not sufficient to create a taxable possessory interest. The California cases seem to turn upon whether the proposed assessee has a right to at least some degree of exclusive possession against the property owner. If he

does not, he is merely a licensee with an interest that does not qualify as a taxable possessory interest under the law. It is entirely possible that one or more of the plaintiffs who are required by the Forest Service to live where they are living may believe that to live elsewhere would confer much greater benefits. However, such employee may not make this decision for himself, anymore than he can decide whether or not to vacate the premises on government demand. The employee, under the above facts, does not have any discernable exclusive right to possession or use as against the government owner as required by the at 619. The employee-plaintiff enjoys no benefit of a lease term at all in this case.

McCaslin case and *Kaiser Co.* v. *Reid*, 30 C.2d, 610

The Court also holds that the "in lieu" payments by the federal government under Title 16 U.S.C. Sec. 500 were intended to replace the tax here imposed on the plaintiff-employees and that further payment would constitute double taxation. The legislative history of Sec. 500 attached to plaintiffs' Trial Memorandum seems to make it quite clear as to what Congress intended by enacting Sec. 500. Since the payments by the federal government under Sec. 500 are "in lieu" payments, and the employees are occupying government property for Forest Service purposes, there would be a resulting double taxation of governmental interests if the employees were required to pay taxes in spite of the "in lieu" payments. Double taxation is prohibited by Sec. 102 of the California Revenue and Taxation Code.

CONCLUSION

In summary, it can be stated that, in the Court's opinion, the peculiar facts involved in the assignment to and occupancy of governmental housing by the individual plaintiffs, creates a state of facts that can be distinguished from the facts existing in those cases cited by defendants where a taxable possessory interest was found to exist.

Dated this 1st day of November, 1972.

/s/ Blaine Pettitt
Judge of the Superior Court

Filed January 8, 1973

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IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

No. 136452

UNITED STATES OF AMERICA, ET AL., PLAINTIFFS

vs.

COUNTY OF FRESNO, DEFENDANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on May 18 and May 19, 1972, in Department No. 1 of the above entitled Court, the Honorable Blaine Pettitt presiding. Dwayne Keyes, United States Attorney, by Richard W. Nichols, Assistant U.S. Attorney, appeared as counsel for plaintiffs. Robert M. Wash, County Counsel, by James B. Waterman, Deputy County Counsel, appeared as counsel for defendant. Evidence, both oral and documentary, having been taken, and arguments having been heard, and the matter having been taken under submission, and the parties having briefed the cause, and the

Court being fully advised in the premises, and good cause appearing therefor, the Court now therefore, on request of both parties, does hereby make the following.

FINDINGS OF FACT

1. Plaintiff United States of America is a corporate sovereign and body politic. Plaintiffs Paul T. Meischke, Donald J. Cooley, Robert N. Thompson, Herbert J. Kendall, Charles Goughnour, Joel M. Criswell, Richard L. Nichols, William P. Cook, John R. Boswell, F. Weldon Sharp, Frank E. Crane, Robert Zwirtz, Paul Spivey, Thomas Adams, Jesse R. Luna, Lawrence L. Cabodi, and Harold F. Sebring, Jr., hereinafter collectively referred to as "the individual plaintiffs", were at all material times, including March 1967, employed by plaintiff United States of America in the Forest Service of its Department of Agriculture.

2. Defendant County of Fresno is a political subdivision and body politic of the State of California.

3. At all material times, including March 1967, the individual plaintiffs were assigned to duty stations by the Forest Service, United States Department of Agriculture, in Fresno County in connection with the protection, maintenance and administration of the Sierra National Forest and the Sequoia National Forest. At said times, said individual plaintiffs were occupying, under assignment by and at the pleasure of the United States of America, living quarters in certain lands and dwellings owned by the United States of America, as an incident of their

employment, pursuant to Title 5 U.S.C. § 5911, for the benefit of the United States of America.

4. Defendant's assessor determined that the individual plaintiffs had possessory interests in the respective quarters occupied by them, in March 1967, and on the basis of said determination assessed the said possessory interests at the respective valuations and levied taxes against the individual plaintiffs in the following respective amounts:

	Assessed Value		
Name of Employee	Land	Improvements	Tax
Paul T. Meischke	$30	$180	$10.43
Donald J. Cooley	80	100	8.26
Robert N. Thompson	30	210	11.01
Herbert J. Kendall	30	180	10.63
Charles Goughnour	30	120	6.88
Joel M. Criswell	30	150	8.26
Richard L. Nichols	30	180	10.63
William P. Cook	10	130	7.09
John R. Boswell	20	50	4.11
F. Weldon Sharp	30	180	10.63
Frank E. Crane	30	40	3.54
Robert Zwirtz	30	30	3.03
Paul Spivey	20	70	6.32
Thomas Adams	20	90	7.73
Jesse R. Luna	20	70	6.32
Lawrence L. Cabodi	20	90	7.73
Harold F. Sebring, Jr.	20	150	11.95

5. On August 31, 1967 the individual plaintiffs paid the taxes set forth in paragraph 4 of these findings of fact, under written protest. On September 15, 1967, the United States of America and the individual plaintiffs filed an application for cancellation or reduction of said assessments and for refund of said taxes paid. Said application was heard before defendant's Board of Supervisors, sitting as a Board of Equalization, on November 15, 1967, and was denied.

6. In their occupancy of the quarters to which they were assigned, the individual plaintiffs had no right of possession, exclusive or otherwise, as against the United States of America. Such occupancy on the part of the individual plaintiffs was terminable at the will of the United States of America, without prior (B.P.) notice to the individual plaintiffs. The necessity for and propriety of such occupancy was determined solely on the basis of governmental needs and governmental purposes, unilaterally by the United States of America through its agents, on the basis of criteria set forth in Title 5 U.S.C. § 5911, Bureau of the Budget Circular A-45, the Forest Service Manual, and the Region 5 Supplement to the Forest Service Manual. In general terms, decisions as to occupancy were made by the Forest Service on the basis of its determination of the most efficient use of particular quarters, and the individual plaintiffs had no right to participate in the assignment decisions.

7. The United States of America retained full rights of access to the quarters occupied by the individual plaintiffs. A single master key fit all locks on the quarters occupied by the individual plaintiffs. No written lease or other occupancy agreement existed between the United States of America and the individual plaintiffs. The individual plaintiffs did not engage in or use the assigned quarters for their individual commercial purposes, but rather used said quarters solely for the purposes of the United States,

(B.P.) even though they may have enjoyed some incidental personal benefits. In fact, they were specifically prohibited by Forest Service Regulation (Title 7 C.F.R. § 0.735-11(p)) from using such premises "for other than officially approved purposes."

8. The United States of America withheld from the biweekly paychecks of the individual plaintiffs sums of money determined by the United States of America to constitute the reasonable rental value to said individual plaintiff employees of the quarters to which they had been assigned. Said withholdings were made after the bi-weekly period of occupancy, and were adjusted in the event that an employee did not actually occupy the quarters for the entire two week period.

9. Defendant's assessor erred in determining that the individual plaintiffs had possessory interests in the quarters occupied by them in March 1967, and erred in assessing possessory interests against said individual plaintiffs. No such possessory interests existed in favor of the individual plaintiffs as to the quarters occupied by them in March 1967.

10. Defendant's assessor erred in attempting to assess possessory interest taxes against the individual plaintiffs, because such assessments constituted an interference with the relationship between the United States of America and its employees, and further because such assessments interfered with the primary disposition of public lands by the United States of America to its own employees for governmental purposes.

11. Defendant's assessor erred in attempting to assess possessory interest taxes against the individual plaintiffs, because such assessments constituted double taxation of governmental interests, by reason of the "in lieu" payments received by the State of California, and distributively by defendant, from the United States of America under the provisions of Title 16 U.S.C. § 500.

12. The individual plaintiffs are entitled to have the possessory interest taxes paid by them, as set forth in paragraph 4 of these findings of fact, returned to them, together with interest thereon at the legal rate from August 31, 1967.

And from and in connection with the foregoing Findings of Fact, the Court now makes the following

CONCLUSIONS OF LAW

1. The interests of the individual plaintiffs in the quarters occupied by them in March 1967 did not constitute possessory interests within the meaning of California Revenue and Taxation Code § 107.

2. Defendant's assessor's attempt to assess and collect possessory interest taxes against and from the individual plaintiffs violated the Supremacy Clause of the United States Constitution, Article VI, Clause 2, by interfering with the relationship between the United States of America and its employees.

3. Defendant's assessor's attempt to assess and collect possessory interest taxes against and from the individual plaintiffs violated Section 3 of the Act for Admission of the State of California, 9 Stat. 452, by interfering with the primary disposition of

public lands by the United States of America to its own employees for governmental purposes.

4. Defendant's assessor's attempt to assess and collect possessory interest taxes against and from the individual plaintiffs violated Section 102 of the California Revenue and Taxation Code, by creating double taxation against governmental interests, in view of the "in lieu" payments received by defendant distributively from the United States of America under the provisions of Title 16 U.S.C. § 500. Said double taxation created a discrimination against the United States of America and against plaintiffs, in violation of the Supremacy Clause of the United States Constitution.

5. Since the individual plaintiffs had no taxable possessory interests in the quarters occupied by them in March 1967, the issues raised by the United States of America and the individual plaintiffs concerning the propriety of the valuation of the possessory interests assessed against the individual plaintiffs are moot.

6. The individual plaintiffs are entitled to a refund of the possessory interest taxes paid by them, under protest, as set forth in paragraph 4 of the Findings of Fact, together with interest thereon at the legal rate from August 31, 1967.

DATED: January 8, 1973

/s/ Blaine Pettitt
Judge of the Superior Court

Filed January 8, 1973

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IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF FRESNO

No. 136452

UNITED STATES OF AMERICA, ET AL., PLAINTIFFS

vs.

COUNTY OF FRESNO, DEFENDANT

JUDGMENT

This Court having heretofore made and entered its Findings of Fact and Conclusions of Law, which are filed concurrently herewith and incorporated herein by reference as though fully set forth herein, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs, and each of them, have and take judgment against defendant;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Paul T. Meischke have and recover from defendant the sum of $10.43, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Donald J. Cooley have and recover from defendant the sum of $8.26, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Robert N. Thompson have and recover from defendant the sum of $11.01, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Herbert J. Kendall have and recover from defendant the sum of $10.63, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Charles Goughnour have and recover from defendant the sum of $6.88, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Joel M. Criswell have and recover from defendant the sum of $8.26, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Richard L. Nichols have and recover from defendant the sum of $10.63, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff William P. Cook have and recover from defendant the sum of $7.09, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that John R. Boswell have and recover from defendant the sum of $4.11, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff F. Weldon Sharp have and recover from defendant the sum of $10.63, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Frank E. Crane have and recover from defendant the sum of $3.54, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Robert Zwirtz have and recover from defendant the sum of $3.03, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Paul Spivey have and recover from defendant the sum of $6.32, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Thomas Adams have and recover from defendant the sum of $7.73, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Jesse R. Luna have and recover from defendant the sum of $6.32, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Lawrence L. Cabodi have and recover from defendant the sum of $7.73, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Harold F. Sebring, Jr., have and recover from defendant the sum of $11.95, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and all of the possessory interest assessments made and entered by defendant against each and all of the plaintiffs herein, except plaintiff United States of America, for the tax year 1967-1968, be, and the same are hereby, cancelled as void, illegal and of no effect.

DATED: January 8, 1973.

/s/ Blaine Pettitt
Judge of the Superior Court

Filed April 2, 1973

IN THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TUOLUMNE

No. 11317

UNITED STATES OF AMERICA, in its own behalf and on behalf of C. W. BATES, J. RUSK, JR., J. R. ALVIS, R. A. GILKEY, S. G. MAUK, T. W. RALLS, D. J. SCHROEDEL, R. C. HENSLEY, C. G. WESTRATE, M. H. HOLLOWAY, J. R. SEILS, and R. K. SEMMENS, each suing in his own behalf, PLAINTIFFS

vs.

COUNTY OF TUOLUMNE, DEFENDANT

MEMORANDUM OF OPINION

The above-entitled matter came on regularly for trial on November 27, 1972, before Hon. Ross A. Carkeet, sitting without a jury. Richard W. Nichols, Esq., Assistant U. S. Attorney appeared on behalf of Dwayne Keyes, Esq., U. S. Attorney, representing plaintiffs. Stephen Dietrich, Jr., Esq., County Counsel, appeared as attorney for defendant, County of Tuolumne. The matter was tried on November 27 and 28, 1972, and ordered submitted on briefs. Closing brief was filed herein and the matter ordered submitted.

NATURE OF ACTION

Plaintiffs' complaint was filed herein on February 21, 1968, and alleges in substance:

1. The corporate and political sovereignty of plaintiff United States of America.

2. That at pertinent times herein the individual plaintiffs were employed by the United States of America (hereinafter called the Government) in the Forest Service of its Department of Agriculture and were assigned to duty stations in Tuolumne County in connection with the protection, maintenance and administration of the Stanislaus National Forest.

3. That defendant County of Tuolumne is a political subdivision and body politic of the State of California.

4. That the Government has brought this action at the request of its Department of Agriculture and under the direction of its Attorney General, in its own behalf and on behalf of the individual plaintiffs because of its interest as sovereign in vindicating its immunity under the Federal Constitution from state and local taxation and in protecting its employees from illegal assessments against them in contravention of rights derived from said immunity.

5. That on the first Monday in March, 1967, and at all times pertinent thereafter, the Government owned in fee simple and was in actual possession of certain lands and dwellings in Tuolumne County which the Government, acting through its Forest Service, held, maintained and used as living quarters

for its employees as provided by Congress in Title 5, United States Code, Section 5911.

6. On the first Monday in March, 1967, each of the individual plaintiffs has been assigned by the Government to, and was occupying, at the Government's pleasure, living quarters in such dwellings as an incident of, and in part compensation for, his employment.

7. That the Tuolumne County Assessor, determining that each individual plaintiff had a possessory interest in the respective quarters occupied by him, assessed the purported possessory interests at the respective valuations and levied taxes against the individual plaintiffs in the following respective amounts:

	Assessed Value		
Name of Employee	Land	Improvements	Tax
Bates, C. W.	$120	$ 970	$78.37
Rusk, J. Jr.	120	1150	91.31
Alvis, J. R.	120	410	38.11
Gilkey, R. A.	120	1010	81.25
Mauk, S. G.	120	1150	91.31
Ralls, T. W.	120	920	74.78
Schroedel, D. J.	200	1040	86.06
Hensley, R. C.	200	750	65.93
Westrate, C. G.	200	1050	86.75
Holloway, M. H.	200	300	35.30
Selis, J. R.	200	650	58.99
Semmens, R. K.	200	1050	17.35

8. That the individually above-named plaintiffs, pursuant to instructions from the Government, paid said taxes on August 31, 1967, under protest.

9. That the Government and the individual plaintiffs filed an application for cancellation or reduction

of said assessments and for refund of the taxes paid, which application was heard before defendant County's Board of Equalization on November 14, 1967, and denied.

10. The protest and application were made, and this action brought upon the grounds that said taxes were erroneously and illegally assessed because, among other reasons:

(a) No tax is provided for under California Law since none of the individual plaintiffs had a taxable possessory interest in the quarters occupied by him; and

(b) The provisions of California law, if and insofar as they provide for said taxes, violate the Constitution of the United States of America and the State of California because of infringement of the immunity of the United States from State and local Taxation and infringement of the rights derived therefrom by the individual plaintiffs, each of whom occupied the quarters assigned to him as a servant of and behalf of the United States; and

(c) Even if any of the individual plaintiffs had a taxable possessory interest, the assessment against him was excessive, erroneous and void;

(i) because it taxed a possessory interest different from the possessory interest which he had; and

(ii) because predicated on an excessive valuation of the possessory interest which, in fact had no value.

11. This action is brought upon the additional grounds that defendants Board of Supervisors, sitting as the Board of Equalization arbitrarily disregarded the evidence adduced at the hearing, in refusing to cancel or reduce said assessments and order refunds as prayed by plaintiffs, and therefore, acted erroneously, illegally and fraudulently.

Plaintiffs seek judgment canceling the assessments against the individual plaintiffs as illegal, void and no effect; reducing the assessments to valuations of zero in each instance, or to such valuations as the court determines to be equitable, should the court find the plaintiffs to have lawfully taxable possessory interests in the quarters they occupy; and directing the refund, with interest, of the taxes paid by plaintiffs, or such portion thereof as the court determines to have been improperly and illegally levied.

On October 23, 1969, defendant filed its First Amended Answer in which defendant admitted the allegations contained in paragraphs 1, 2, 3, 4, 7, 8 and 9 of plaintiffs' complaint.

Answering Paragraph No. 5 defendant admits Government ownership in fee simple of the lands and buildings involved but denies that the Government was in actual possession of said lands and dwellings.

Answering Paragraph 6 of the complaint defendant admits that during the times involved each of the individual plaintiffs had been assigned to and was occupying living quarters in such dwellings as an incident of his employment, but denies that such occupancy was at the pleasure of the Government.

Defendant denied, for lack of information or belief, the allegations in Paragraph 6 that said occupancies were in part compensation for the employment of the individual plaintiffs.

Defendant further alleged that at all times herein mentioned, each individual plaintiff was in actual and exclusive possession of the Government-owned dwelling which he occupied, that he paid a monthly rental therefor, and that the amount of this monthly rental was appreciably less than rents paid by other persons for privately owned similar facilities in the same area of Tuolumne County.

Plaintiffs filed a motion for summary judgment which was denied by the Court.

A pre-trial conference was held herein and a pre-trial Order made herein on August 20, 1971.

AGREED FACTS

At a pre-trial hearing on August 20, 1971, the following facts were agreed upon, as set forth in the Pre-Trial Conference Order of the same date:

1. Plaintiff United States is a corporate sovereign and body politic.

2. During the times involved the individual plaintiffs were employed by plaintiff Government in the Forestry Service of its Department of Agriculture and were assigned to duty stations in Tuolumne County in connection with the protection, maintenance and administration of the Stanislaus National Forest.

3. Defendant County of Tuolumne is a political subdivision and body politic of the State of California.

4. The Government brings the action on its own behalf and in behalf of the individual plaintiff because of its interest as sovereign in vindicating its immunity and the U. S. Constitution from state and local taxation and in protecting its employees from illegal assessments against them in contravention of rights derived from said immunity.

5. Fee ownership of the lands and buildings involved by the Government on the first Monday in March, 1967, same being held and used as living quarters for its employees.

6. On said date each of the individual plaintiffs had been assgined by the Government to, and was occupying such living quarters in such dwellings as an incident of his employment.

7. The assessed values of the land and improvements assessed to each of the individual plaintiffs and the taxes levied thereon are as set forth in Paragraph 7 of the complaint.

8. Said individual plaintiffs, pursuant to instructions of the Government paid said taxes under written protest on August 31, 1967.

9. On September 14, 1967, the Government and the individual plaintiffs filed an application for cancellation or reduction of said assessments and for refund of said taxes and said application was heard by the Board of Supervisors of defendant county, sitting as a Board of Equalization on November 14, 1971, and was denied.

ISSUES TO BE RESOLVED

a. Whether the individual plaintiffs' interests are taxable possessory interests as defined in Revenue and Taxation Code Section 107?

b. If they are taxable possessory interests under Sec. 107, is this in violation of the doctrine of sovereign immunity as made applicable by the supremacy clause of the U. S. Constitution? This issue also includes: (1) Whether or not it violates the supremacy clause of the State Constitution; (2) Whether or not it violates the Act of Admission of the State of California; (3) whether it violates the prohibitions of the Revenue & Taxation Code against double taxation; (4) Whether it violates the prohibition against discriminating against the U. S. in matters of taxation (including Tit. 16 U.S.C. Sec. 500 —in lieu taxes—and Sec. 4654 Public Resources Code —exempting State Forests from possessory interests taxation)?

c. If the interests of plaintiffs are taxable possessory interests, is the Assessor's valuation excessive, arbitrary and discriminatory?

Procedurally, it is agreed that plaintiffs were entitled to a trial *de novo* on the first two issues. They also are in agreement that the Court is limited to the record before the Board of Supervisors, sitting as a Board of Equalization, on the third issue, under the substantial evidence rule, with this caveat, however, that if the record of the Board of Supervisors was deemed inadequate by the Court, plaintiffs would have the right to supplement it under the authority

of *Madera* v. *Holcomb* 259 CA 2d 226, 230-231 (and R.T. 1605.3).

ADDITIONAL FACTS AS FOUND BY THE COURT

1. In the utilization of rental quarters belonging to the Stanislaus National Forest certain basic criteria are followed and these are delineated in the (1) "Forest Service Manual". (Plaintiffs' Exhibit No. 3); (2) R-5 Western Regional Supplement No. 3 (Plaintiffs' Exhibit No. 4; (3) Bureau of the Budget Circular No. A-45, dated October 31, 1964 (Plaintiffs' Exhibit No. 5).

The following sections of the Forest Service Manual are pertinent to the instant litigation (Ex. 3):

"(a) Sec. 6445.03 relating to *policy*, which provides that "rental rates, and charges for other facilities made available in connection with the occupancy of rental quarters shall be based upon the reasonable value . . . in the circumstances under which provided, occupied, or made available". It further provides that rents or other charges may not be set to provide an inducement either in recruitment or rentention of employees, or as an inducement to encourage occupancy of government housing.

This section further notes that occupancy usually is permissive, rather than required by the Forest Service, but may be required when "the head of the agency concerned shall determine that necessary service cannot be rendered, or that property of the Government cannot adequately be protected, otherwise."

(b) Sec. 6445.05 defines "*comparable housing*" as private housing that is "generally equivalent in size and quality to Government rental quarters, with the same number of bedrooms, and with generally equivalent amenities and facilities, including garage or carpet."

"*Private housing*" is defined as housing "rented on a 'landlord-tenant' basis, with rental rates reflecting the fair-market value of the accommodations to the tenant."

The following sections of the R-5 Western Regional Supplement (Ex. No. 4) are pertinent to the instant case:

(a) *Sec. 6445.03—Policy,* provides that an employee shall only be required to live in a Government dwelling when there is no other way to acquire a specific service or Government property cannot otherwise be adequately protected.

(b) *Sec. 6445.04*—makes the Forest Supervisor responsible for quarters classification according to the standard structure. He is also to assign the appropriate rent rate to each Government quarters according to the regional schedule. "Each quarters rent rate will be based on the quarters classification, the adjustments due to Consumer's Price Index, the amenities present, and the distance to the nearest established community."

(c) *Sec. 6445.1 Conditions of Occupying Quarters.* Provides that employees occupying Government Quarters shall have responsibility for proper maintenance of the building and notify the proper authority of any maintenance needed to prevent damage to the building.

(d) *Sec. 6445.23—Survey Procedures.* Provides for classification of dwellings on the basis of the primary purpose for which they were designated. "For example, modern 3-bedroom house designed for family occupancy in a Class-A structure, while a modern 10-man barracks is Class-E, etc."

Provides also that the questions of *exclusive versus non-exclusive* use must be considered in establishing dwelling classes and rates." Non-exclusive use permits moving other personnel into a building without approval of the employee or employees already living there. Exclusive use does not permit this."

The Bureau of the Budget Circular A-45 of October 31, 1964. (Exhibit No. 5) provides in part as follows:

(a) It reiterates the *policy* and *definitions* above quoted and further defines "incomparable housing". It sets forth rental principles as follows:

"6. *Principles*

(a) *Basic rent principle.* "When rental quarters are located within or adjacent to (nor more than five miles from the boundary of) an established community which offers a rental housing market, basic rental rates will be set at rates prevailing for comparable private housing in and adjacent to *that* community."

(b) If the rental quarters are not within or adjacent to such a community, agencies may (1) use rental rates in and adjacent to the nearby representative private community as a base for establishing comparable rentals, or (2) set basic

rental sales in comparison with the average of rental rates for comparable private housing in an economically homogenous area in which the rental quarters are located.

Adjustments upward or downward from the basic rates may, within specified limits, be made to accommodate such factors as unusual transportation costs, etc.

2. The line of organization as it existed in 1967 was as follows:

A Chief Forester with 9 Regions under his command. Each Region is administered by a Regional Forester. Each National Forest within a Region is administered by a Forest Supervisor. Each National Forest is divided into Ranger Districts and each such District is headed up by a District Ranger.

The Forest Supervisor is responsible for all the uses, resources and activities in his forest. The District Ranger has identical responsibilities as to his smaller unit.

3. In testing and analyzing private rental figures for Stanislaus National Forest under Sec. 6445.43, Sonora, in Tuolumne County, and Angels Camp and Altaville, in Calaveras County were the communities used and the sampled facilities were for 3 classifications, viz:

Class A—3 bedroom modern home;
Class B—2 bedroom modern home;
Class C—1 bedroom modern home.

4. Under Section 6445.03 the 3 conditions under which the Forest Supervisor could require the employee to live in Government quarters are:

(a) To provide service to the public;
(b) To protect natural resources;
(c) To operate necessary or specialized equipment.

5. There are no written agreements concerning occupancy. The quarters are normally assigned by the District Ranger (except that his own quarters are assigned by the Supervisor). The employee has no choice. He can state his preference, but the decision is the Ranger's.

6. Rent is paid through bi-weekly deductions from the employees pay check. He never sees the rent money and he has no negotiating power over the amount of rent.

7. The money withheld is for the period preceding the payment check. If the premises are not occupied for a part of the preceding two weeks, withdrawal is made on a computed daily rate of actual occupancy.

8. In most situations there is one residence for the District Ranger. If he chooses to live elsewhere, it may be done, provided the Supervisor lets some one else live in the Ranger's home.

9. The assignments are based on efficiency of use and a bachelor is low on the list and can be moved out to make room for a family if no other quarters are available.

10. The only recourse an employee has is an administrative appeal to the Supervisor to overrule the District Ranger. The Ranger's decision is a purely discretionary matter.

11. *Harold L. Mitchell* was in 1967 Branch Chief in charge of Work Load Analysis. Part of his responsibility was administering the Region's quarters rental program. After testifying in accordance with substantially all of the facts as above found by the Court, he further testified:

(a) An employee has no right to exclude the Ranger or Supervisor from his living quarters;

(b) The Ranger or Supervisor can enter the living quarters for *any* reason (but as a matter of courtesy it is not done). (However, if either suspected illegal use, or abuse of the premises, he could).

(c) The Ranger can move or shift the occupants at any time; no basic notice is required.

(d) In case of emergency the Ranger can temporarily move the occupants out and take over the premises.

(e) The employee has no right *on his own* to make any repairs, alteration or modification of the premises.

(f) The Ranger can adjust the rent upward and the employee cannot sublease.

(g) There is a standard Forest Service lock and key and the key fits all Forest Service buildings, including private living quarters. Virtually every employee has such a key and must return it on leaving the area.

(h) Occasionally the keys do get in the hands, of non-employees, such as contractors, specialty repairmen, etc.

(i) There are items of communication such as telephone and radios in some of the living quarters. Anyone who is a Forest Service Officer can go in and use the radio. It is designed to be available for 24 hour use.

(j) Witness was at one time Fire Control Officer for Stanislaus National Forest and is familiar with the living quarters occupied by all twelve plaintiffs on the first Monday of March, 1967.

(k) While it is true the Supervisor or District Ranger (usually acting through his fire control officer), can inspect the living quarters at any time, it is also true that it is an established procedure "as a matter of courtesy to give as much notice as possible."

(l) The employee is not supposed to put on a lock of his own—but might under some situations, for protection of his family—but he is supposed to get the Ranger's O. K.".

(m) Normally there is a radio in the fire control officers dwelling and any Forest Service Officer who has a key can go in and use the radio. This happens more frequently in the remote areas. "The 12 homes involved are not considered 'remote'."

(n) The employee can decline to live in the furnished quarters unless he is in a position that requires occupancy.

(o) The regulations provide that the Supervisor can enter to make certain inspections; this authority can be delegated down the line by the Supervisor to the Ranger.

(p) Inspections are primarily for the protection of the Forest and of the occupant.

(q) There is nothing that says the Supervisor or Ranger can go in for his own personal reasons, such as to make a sandwich, take a bath, etc.

(r) The Ranger determines which occupant shall have the radio, it is not a matter of choice among the occupants.

(s) The term "exclusive use" as used in the regulations means exclusive against the public and other employees, but not aganist superior officers.

11. *Robert E. Stokes* (*not* a plaintiff in this action), who is a Resource Fire Control Officer for Stanislaus National Forest has been employed in said Forest for eight years. He lives in private housing, but lived in Forest Service Housing fourteen years in Modoc and Lassen counties, within the national forests. He has experienced the following:

(a) While living in a compound he has had people come to his door and knock for information when the office was closed. This has occurred at all hours.

(b) He has actually had people, such as hunters, walk in without knocking—when he himself left the door unlocked.

(c) He has had to move on short notice, when he was single, to make the quarters available for a married couple—once with only one hour notice he had to vacate a trailer he occupied for a married couple to have it.

(d) He has lived in trailers, tents, two bedroom homes and barracks. He has *never* moved out of a family residence.

(e) He has never had a superior officer come in and use the living facilities, or any part of it without advance notice, nor has he ever had any superior officer come in and help himself for personal use such as food, bathing, sleeping, etc.

12. *Robert J. Patchin* (*not* a plaintiff in this action) is Administrative Officer for Stanislaus National Forest and has been since 1966. He testified that they follow the manual as it is followed in other forests. He testified as follows:

(a) As of the first Monday of March, 1967, the individual plaintiffs occupied dwellings belonging to the U.S. Forest Service and located in the Summit District and the Groveland District within Stanislaus National Forest as follows:

Summit District:

#1011 Daniel J. Schroedel
#1013 Robert K. Semmens
#1005 Robert C. Hensley
#1012 Carl G. Westrate
#1009 J. R. Seils
#1110 M. H. Holloway

Groveland District

#1015 Sam G. Mack
#1014 John Rusk, Jr.
#1104 James R. Alvis
#1006 Thomas N. Ralls
#1002 Riley A. Gilkey
#1001 Curtis W. Bates

(b) There are no written records indicating or showing that the occupancy of the Forest Service housing was *required* of any of the above plaintiffs.

(c) Being a unit head of a district (Ranger) or a fire control officer would require 24 hour availability for response. Carl Westrate was Ranger at Summit District and Robert C. Hensley Fire Control Officer in the same district. In Groveland District John Rusk, Jr. was Ranger and Thomas N. Ralls Fire Control Officer. The 24 hour demand would of necessity require them to live on the compound. The other occupanices might not necessarily be required.

(d) All who occupied such quarters were treated alike and subject to the same requirements, such as inspections, etc.

(e) The Groveland Compound is on highway 120, six or eight miles East of Groveland with no other immediate improvements in the area. Summit compound is in the heart of Pinecrest and surrounded by improvements.

(f) In each District the Fire Control Officer was the only one who had a radio in his home.

(g) No policies concerning inspections had been established in either district, other than as set out in the manual.

13. Four of the plaintiffs testified. They were *Carl G. Westrate*, who is now Assistant Branch Chief of the Division of Recreation, but who was Ranger of the Summit District in March, 1967, and who has spent 18 years in the Forest Service; *Robert C. Hensley* who is now District Fire Control Officer for Goose Neck District in Siskiyou County and was Fire Control Officer for Summit District in March, 1967; *Thomas W. Ralls*, who is now and was in March 1967, Fire Control Officer for Groveland District; Robert K. Semmens, now Recreation Officer for Shasta Lake District in Trinity National Forest and who was in March, 1967, Recreation Assistant for Summit District. Their testimony may be summarized as follows:

(a) *Carl G. Westrate*—has had to move in on occupants for emergency purposes, such as fire, and use their home for a headquarters; this happened at Brightman's Flat, and the family *elected* to move out; after two or three days the home was no longer used as headquarters and the family moved back in; they were given approximately ½ day's notice; he has never been moved out himself; no improvements could be made on the dwellings in his compound without his approval; he lived with his family in the same Government Quarters at Pinecrest for two years; the Brightman's Flat quarters were much smaller, used only for summer

occupancy and was the phone communication for the area—so it was used as part of the command post; he has had superiors come into his quarters to use the phone and the radio but never to help themselves for personal reasons such as food, drink, bathing, sleeping, etc.; it is a common practice as a matter of courtesy to give occupants *notice* of proposed inspection, in his previous location was there for six years and occupied two Government homes, three years each.

(b) *Robert C. Hensley*—he has had the public contact him at his Government residence and asked to use his phone, or for directions, or for the nearest rest rooms, and on occasion have had requests from the public even to use his bathroom; at Pinecrest Compound he felt obligated to serve even from our residences; on one occasion Ranger got a complaint from an L.A. woman that office was not open; Supervisor requested Ranger to answer and "I was directed to change the sign so it directed people to the back of the station—where we lived;" we would request strange locks be removed, because we felt we couldn't adequately protect the house with that type of lock; has not been moved out on short notice; but has seen (at other locations) others moved out in emergencies so their dwellings could be used for headquarters; he stayed in same quarters at Summit District for five or six years; as Fire Control Officer he'd inspect and normally would give advance notice of

inspection; he recited one fire experience in Arizona where some of the men went in one occupied quarters and took showers, but admitted it was in an isolated area and with permission of the occupants.

(c) *Thomas W. Ralls*—his quarters are close to the office and he has had numerous public contacts when office closed; except in case of emergency, he gives notice of intended inspection; radio is in his home and he keeps in 24-hour communication; "others *could* use the radio"; he now occupies different home—3 bedrooms—than he did in March, 1967; he moved at *own* request, and with Rangers permission, because his family increased; he is not required to stay at home after office closes; he has never had any superior officer or other employee come in and use any of the facilities without his permission.

(d) *Robert K. Semmens*—has had people referred to his residence for service when clerks in the office didn't know the answers; at Summit compound there were inspections at least once a year, sometimes twice; usually advance notice given; he has never been given short notice to vacate; he has never had any superior officers or other employees come into his quarters and help themselves to the use of facilities or supplies; he had no radio in his quarters at Summit District; he occupied the same quarters from 1966 to August, 1969 when he left Summit District.

14. No testimony was received at the trial on the question of the assessor's method of valuation. In arriving at the full cash value of the property the assessor used a replacement cost factor and according to the findings of the Board of Equalization: the ratio of the assessed value of the properties to the full cash value is 25%; the Assessor determined that the assessed value of each of the possessory interest was set forth on page 3 of this opinion; in valuing said possessory interests the Assessor determined the fair market value of each Forest Service residence; and that the Assessor used an estimated term of occupancy of five years in determining the value of said possessory interests.

15. The Board of Supervisors sitting as a Board of Equalization thereupon made the following Decision, based upon its Findings of Fact and Conclusions of Law:

"The Board hereby determines that the full cash value of each possessory interest is as follows:

	Full Cash Value	
Name of Employee	Land	Improvements
Bates, C. W.	$480	$3880
Rusk, J. Jr.	480	4590
Alvis, J. R.	480	1650
Gilkey, R. A.	480	4040
Mauk, S. G.	480	4590
Ralls, T. W.	480	3700
Schroedel, D. J.	800	4140
Hensley, R. C.	800	4210
Holloway, M. H.	800	1180
Seils, J. R.	800	2600
Semmens, R. K.	800	4210

"The Board further determines that in the County of Tuolumne the ratio of the assessed value of property to its full cash value is twenty-five (25) percent.

"The Board finds that the product of the full cash value of each of the possessory interests, as determined herein, and the ratio of its assessed value to its full cash value, as determined herein, equals the assessed value established by the Assessor for each of the possessory interests, as hereinabove set forth.

16. The plaintiffs do not contest any portion of the formula by which the Assessor imposed the possessory interests in question, other than the *term* of possession he found to exist, i.e. the term of five years.

17. This Court determined at trial, that the valuation question would rest on the record presented to the Board of Supervisors.

18. The Tuolumne County Assessor testified at the tax hearing before the Board that in order for him to determine the value of the possessory interests of plaintiffs it was necessary for him to establish a "term", that is, the estimated length of time the owner of a possessory interest would own such interest and that the term be used was five years, which was a reasonable estimate of the average length of time U. S. Forest Service employees were stationed in Tuolumne County before being transferred or terminated; that the five year term was arrived at by the Assessor's own "personal knowledge of the past history of the U. S. Forest Service in Tuolumne

County and my frequent personal contacts with Forest Service Personnel over a period of thirty-five years during which I worked as a surveyor, logging engineer, assistant manager and vice-president of Pickering and West Side Lumber Companies."

19. Although most of the plaintiffs had occupied their quarters only a year and a half or so as of the first Monday in March, 1967, half of them were still occupying their quarters on the 1st Monday in March, 1970.

DISCUSSION OF LAW AS APPLIED TO THE FACTS

Counsel for both sides of this controversy are to be commended for their presentation of legal arguments and points and authorities in this case. All have been read and carefully considered by this Court.

In its "Order Denying Motion For Summary Judgment", filed herein on January 26, 1971, this Court emphasized that there was no evidence at that time to show the Government claimed any right of entry into an occupied premises except for the purposes of inspection and that there was no evidence that the Government had any right to enter for any other reason. Reservation of the right of re-entry for the purposes of inspection is not uncommon, and where an employee rents and occupies with the understanding the Government has the right to enter at any time for that limited purpose, it does not destroy the tenant's exclusive possession. (*30 Cal. Jur. 2d 471*).

Since the Order Denying Motion for Summary Judgment the additional testimony and documentary evidence received since the trial have enlarged the record on the *factual* situation regarding the relationship between the Government and the individual plaintiffs and the nature of the tenancy between them, if indeed it can be called a "tenancy".

It is clear now from the evidence that probably the two Ranger plaintiffs and the Fire Control Officer Plaintiff were occupying their quarters because the 24-hour duty nature of their positions required it. The other individual plaintiffs could probably have occupied rental quarters elsewhere and held their jobs, but their presence in their respective compounds contributed a continuing service for the Government to the public at such times as the office was closed and at such times as the Fire Control Officer was absent.

A careful analysis of the whole of the testimony leads to the inescapable conclusion that the individual plaintiffs are assigned by the Ranger and/or Supervisor to occupy their respective dwellings as an incident of their employment and for the benefits of the Forest Service. (*Title 5 U.S.C. Sec. 5911*).

It is clear from the evidence that the employees have no freedom of choice of premises whatsoever in connection with the assignments of same. While they may make a statement of preference, the discretion of assigning officer is absolute.

As they have no freedom of choice in selecting living quarters, so they have no bargaining power ei-

ther as to amount of rental or time, place or method of payment of same.

The testimony clearly shows at this time that not only does the superior officer have the right of inspection at any time, but that inspection can be made without notice (although as a matter of courtesy it seldom is). A standard Forestry lock is required to be on each rental quarters and all superior officers and other authorized employees of the Forest Service have a key to that lock. (No exception to this lock requirement is made without permission of the Ranger and then on a purely temporary basis and with key supplied to the superior officer). While it is not the practice for the superior officer to make unannounced entries into the living quarters, he has the *right* and the *means* with which to do so.

Security in occupancy does not exist, because the rules require that the quarters must be put to the most efficient use. A single man can be evicted with no notice to make room for a married man; a married employee with no children can be evicted with no notice to make room for a married man with children; another occupant can be moved into an already occupied quarters without consent of the existing occupant for the purposes of sharing occupancy of the living quarters, at the sole discretion of the Ranger or Supervisor. (While this is usually limited to moving a single occupant into a quarters only occupied by single occupants, the power exists to move an occupant into a quarters occupied by a family).

All occupancies are subject to the right of the Government to immediately evict without notice, at any time the Government decides the quarters are needed for a communication center, command post, or any use the Ranger or Supervisor thinks, in his sole discretion, outweighs in efficiency occupant's use as a living quarters.

No occupant is permitted to make any alteration, improvement or repair to the quarters occupied by him without the consent of the superior officer.

There is no evidence in this case whatsoever showing that any month to month tenancy exists. The actual collection of money for payment of rental is done by a withholding deduction from the employees' bi-weekly payroll check. He has no say whatsoever in this manner of payment. Furthermore, the evidence discloses that this is really not a bi-weekly tenancy, because the payment is not an *advance* payment of rental, but a payment for the *past* two weeks use of the premises, or if for less than two weeks, then withholding deduction is made on a computed daily rate of occupancy.

The true fact of the matter is that none of the individual plaintiffs have a right to exclude the Ranger from entering his quarters, and the Ranger has no right to refuse the Supervisor entry into his quarters at any time, for any purpose.

The employee has no right to sublease any portion of the premises nor to move in anyone other than his immediate family.

No written lease or agreement setting forth any terms, term of tenancy or rate of rental exists be-

tween any of the individual plaintiffs and the Government.

This case is easily distinguishable, in the light of the whole trial testimony, from *McCaslin* v. *DeCamp* (1967) 248 CA 2d 13, cited by both counsel. *McCaslin* involved the taxability of a possessory interest of McCaslin who was an employee of Central California Irrigation District, a tax-exempt public agency. He and his family occupied a single-family residence belonging to the district and paid the district a monthly rental therefor. He paid his taxes on the possessory interest assessed by Stanislaus County, under protest, and sued to recover. In his first verified complaint he alleged he had no interest in the property "other than as a tenant in a month-to-month basis." In his first amended complaint he omitted the quoted words. The district contended that McCaslin occupied the property as an employee of and at the complete sufferance of the district, and at its request in connection with his employment and therefore since the property was being used for a district purpose it was tax-exempt. The Court said:

> "Plaintiffs' arguments are without merit. . . . until actual termination of his employment by the district he had the exclusive use and possession of the premises, not only for himself, but for his family as well. This exclusive use and possession was sufficient to create a possessory interest even though conditioned on McCaslin's employment, which could be terminated by the district. This is true for the test is not whether the tax-exempt agency has a right to

> terminate the tenancy or occupancy, or whether the taxpayer has a non-transferable interest, *but whether he has the exclusive use and possession of the property against all the world, including the owner.* (*Kaiser* v. *Reid*, supra, 30 Cal. 2d 610). In other words, if the employee's right to the use and possession of the employer's real property *is in common with other employees*, or *if it is subordinate to the right of possession of the employer, the employee's right is a mere permit or license which is not taxable.* But, if his use and possession are exclusive to others, including the employer, and particularly when he is paying rent therefor, it is a possessory interest under Revenue & Taxation Code section 107, and the right of the employer to terminate the employment and hence the occupancy is only a factor to be considered in fixing its value. . . ." (Underscoring added)

Since the filing of this Court's decision denying the summary judgment motion, the Fresno County Superior Court in the case of "U.S.A. vs. Fresno County No. 136452," rendered a decision (Hon. Blaine Petitt), in a case almost identical to the instant case, on November 1, 1972. The decision of that Court was in harmony with this Court as to the non-existence of a possessory interest on the factual situation.

In addition, the Fresno Court held such a tax violated the state constitutional provisions against double taxation as evidenced and expressed in Rev. & Tax. Code, Section 102.

A convincing argument is made out by plaintiffs' evidence of legislative history surrounding the enactment and amendment of Sec. 500 Title 16 U.S. Code, as attached to plaintiffs' "Trial Memorandum", and in which the legislators repeatedly referred to the 10%, and subsequently 25% Forest revenue payments to the Counties as an "in lieu" tax. This Court does not, however, rest its decision on such conclusion, in view of the following cases: *Board of Supervisors* vs. *Archer* (Modoc County) (1971) 18 CA 3rd 717, and *Georgia Pacific Corp.* v. *County of Mendocino* (1972) 340 F.Supp. 1061, in which both State and Federal courts considered the matter of Title 16 U. S. Code Sec. 500 as being "in lieu" of taxes and concluded such was *not* the case.

This Court bases its decision squarely on the factual situation which does not raise the occupancy of the individual plaintiffs to the dignity of a possessory interest, but rather justifies a finding only of mere permit or license.

Judgment should therefore be granted annulling and cancelling the tax and ordering refund of same to the individual plaintiffs, together with their costs of action. If findings are required, plaintiffs shall prepare same, and shall prepare and serve form of Judgment as required by California Rules of Court.

DATED: March 31st, 1973.

/s/ Ross A. Carkeet
Judge of the Superior
Court

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Filed May 14, 1973

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TUOLUMNE

No. 11317

UNITED STATES OF AMERICA, in its own behalf, et al., PLAINTIFFS,

vs.

COUNTY OF TUOLUMNE, a political subdivision of the State of California, DEFENDANT.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause came on regularly for trial on November 27 and November 28, 1972, before the Honorable Ross A. Carkeet, judge of the above entitled court, without a jury. Dwayne Keyes, United States Attorney, by Richard W. Nichols, Assistant U.S. Attorney, appeared as counsel for plaintiffs. Stephen Dietrich, Jr., County Counsel, appeared as counsel for defendant. Evidence, both oral and documentary, having been taken, and the matter

having been taken under submission, and the parties having briefed the cause, and the Court being fully advised in the premises, and good cause appearing therefor, the Court now therefore, on request of defendant, does hereby make the following

FINDINGS OF FACT

1. Plaintiff United States of America is a corporate sovereign and body politic. Plaintiffs C. W. Bates, J. Rusk, Jr., J. R. Alvis, R. A. Gilkey, S. G. Mauk, T. W. Ralls, D. J. Schroedel, R. C. Hensley, C. G. Westrate, M. H. Holloway, J. R. Seils, and R. K. Semmens, hereinafter collectively referred to as "the individual plaintiffs", were at all material times, including March 1967, employed by plaintiff United States of America in the Forest Service of its Department of Agriculture.

2. Defendant County of Tuolumne is a political subdivision and body politic of the State of California.

3. At all material times, including the first Monday in March 1967, the individual plaintiffs were assigned to duty stations by the Forest Service, United States Department of Agriculture, in Tuolumne County in connection with the protection, maintenance and administration of the Stanislaus National Forest. At said times, said individual plaintiffs were occupying, under assignment by and at the pleasure of the United States of America, living quarters in certain lands and dwellings owned by

the United States of America, as an incident of their employment, pursuant to Title 5 U.S.C. § 5911, for the benefit of the United States of America.

4. Defendant's assessor determined that the individual plaintiffs had possessory interests in the respective quarters occupied by them on the first Monday in March 1967, and on the basis of said determination assessed the said possessory interests at the respective valuations and levied taxes against the individual plaintiffs in the following respective amounts:

	Assessed Value		
Name of Employee	Land	Improvements	Tax
C. W. Bates	$120	$ 970	$78.37
J. Rusk, Jr.	120	1150	91.31
J. R. Alvis	120	410	38.11
R. A. Gilkey	120	1010	81.25
S. G. Mauk	120	1150	91.31
T. W. Ralls	120	920	74.78
D. J. Schroedel	200	1040	86.06
R. C. Hensley	200	750	65.93
C. G. Westrate	200	1050	86.75
M. H. Holloway	200	300	35.30
J. R. Seils	200	650	58.99
R. K. Semmens	200	1050	17.35

5. On August 31, 1967, the individual plaintiffs paid the taxes set forth in paragraph 4 of these findings of fact, under written protest. On September 14, 1967, the United States of America and the individual plaintiffs filed an application for cancellation or reduction of said assessments and for refund of said taxes paid. Said application was heard before defendant's Board of Supervisors, sitting as a Board

of Equalization, on November 14, 1967, and was denied.

6. In their occupancy of the quarters to which they were assigned, the individual plaintiffs had no right of possession, exclusive or otherwise, as against the United States of America. Such occupancy on the part of the individual plaintiffs was terminable at the will of the United States of America, without prior notice to the individual plaintiffs. The necessity for and propriety of such occupancy was determined solely on the basis of governmental needs and governmental purposes, unilaterally by the United States of America through its agents, on the basis of criteria set forth in Title 5 U.S.C. § 5911, Bureau of the Budget Circular A-45, the Forest Service Manual, and the Region 5 Supplement to the Forest Service Manual. In general terms, decisions as to occupancy were made by the Forest Service on the basis of its determination of the most efficient use of particular quarters, and the individual plaintiffs had no right to participate in the assignment decisions.

7. The United States of America withheld from the bi-weekly paychecks of the individual plaintiffs sums of money determined by the United States of America to constitute the reasonable rental value to said individual plaintiff employees of the quarters to which they had been assigned. Said withholdings were made after the bi-weekly period of occupancy, and were adjusted in the event that an employee did not actually occupy the quarters for the entire two-week period. The individual employees had no negoti-

ating power in connection with the amount of rent charged, as said amounts were established by the Forest Service on the basis of its surveys of available rental facilities in Sonora, Angels Camp and Altaville.

8. The United States of America retained full rights of access to the quarters ocupied by the individual plaintiffs. A single master key fit all locks on the quarters occupied by the individual plaintiffs, and the individual plaintiffs were prohibited from adding their own additional locks without the consent of their superiors. No written lease or other occupancy agreement existed between the United States of America and the individual plaintiffs. The individual plaintiffs had no right to exclude their superiors in the Forest Service from entry into the quarters, had no right to sublease the quarters, had no right to make alterations or modifications to the quarters without the consent of their superiors, and had no right to use the premises "for other than officially approved purposes." Title 7 C.F.R. § 0.735-11(p). The term "exclusive use" as it appeared in certain of the Forest Service regulations related to exclusivity between the occupant and members of the public or other Forest Service employees, but did not create a condition of exclusivity as between the individual employee and his superiors in the Forest Service.

9. Defendant's assessor erred in determining that the individual plaintiffs had possessory interests in the quarters occupied by them on the first Monday

in March 1967, and erred in assessing possessory interests against said individual plaintiffs. No such possessory interests existed in favor of the individual plaintiffs as to the quarters occupied by them on the first Monday in March 1967. The individual plaintiffs are therefore entitled to have the possessory interest taxes paid by them, as set forth in paragraph 4 of these findings of fact, returned to them, together with interest thereon at the legal rate from August 31, 1967.

And from and in connection with the foregoing Findings of Fact, the Court now makes the following

CONCLUSIONS OF LAW

1. The interests of the individual plaintiffs in the quarters occupied by them on the first Monday in March 1967 did not constitute possessory interests within the meaning of California Revenue and Taxation Code § 107. Defendant's assessor erred in determining that such interests constituted taxable possessory interests, and erred in assessing said possessory interests against the individual plaintiffs.

2. The individual plaintiffs are therefore entitled to a refund of the possessory interest taxes paid by them, under protest, as set forth in paragraph 4 of the Findings of Fact, together with interest thereon at the legal rate from August 31, 1967.

3. Since the individual plaintiffs had no taxable possessory interests in the quarters ocupied by them on the first Monday in March 1967, the issues raised

by the United States of America and the individual plaintiffs concerning the questions of whether the assessment and collection of said possessory interest taxes (1) violated the Supremacy Clause of the United States Constitution, Article VI, Clause 2, by interfering with the relationship between the United States of America and its employees, (2) violated Section 3 of the Act for Admission of the State of California, 9 Stat. 452, by interfering with the primary disposition of public lands by the United States of America to its own employees for governmental purposes, (3) violated Section 102 of the California Revenue and Taxation Code by creating double taxation against governmental interests, in view of the "in lieu" payments received by defendant distributively from the United States of America under the provisions of Title 16 U.S.C. § 500, (4) violated the Supremacy Clause of the United States Constitution, Article VI, Clause 2, by creating double taxation against governmental interests and thus discriminating against the United States of America and the individual plaintiffs, by reason of Section 4654 of the California Public Resources Code, and (5) was excessive, arbitrary and discriminatory as to the valuation by reason of the term of ocupancy assessed, are all moot, and this Court makes no conclusions of law with regard to said issues.

Let judgment be entered accordingly.

DATED: May 14, 1973.

/s/ Ross A. Carkeet
ROSS A. CARKEET
Judge of the Superior Court

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Filed May 14, 1973

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF TUOLUMNE

No. 11317

UNITED STATES OF AMERICA, in its own behalf, et al., PLAINTIFFS,

vs.

COUNTY OF TUOLUMNE, a political subdivision of the State of California, DEFENDANT.

JUDGMENT

This Court having heretofore made and entered its Findings of Fact and Conclusions of Law, which are filed concurrently herewith and incorporated herein by reference as though fully set forth herein, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiffs, and each of them, have and take judgment against defendant;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff C. W. Bates have and recover from defendant the sum of $78.37, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff J. Rusk, Jr., have and recover from defendant the sum of $91.31, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff J. R. Alvis have and recover from defendant the sum of $38.11, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff R. A. Gilkey have and recover from defendant the sum of $81.25, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff S. G. Mauk have and recover from defendant the sum of $91.31, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff T. W. Ralls have and recover from defendant the sum of $74.78, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff D. J. Schroedel have and recover from defendant the sum of $86.06, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff R. C. Hensley have and recover from defendant the sum of $65.93, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff C. G. Westrate have and recover from defendant the sum of $86.75, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff M. H. Holloway have and recover from defendant the sum of $35.30, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff J. R. Seils have and recover from defendant the sum of $58.99, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff R. K. Semmens have

and recover from defendant the sum of $17.35, plus interest thereon at the rate of 6% per annum from August 31, 1967;

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED that each and all of the possessory interest assessments made and entered by defendant against each and all of the plaintiffs herein, except plaintiff United States of America, for the tax year 1967-1968, be, and the same are hereby, cancelled as void, illegal and of no effect.

DATED: May 14, 1973.

/s/ Ross A. Carkeet
Judge of the Superior Court

APPENDIX B

CERTIFIED FOR PUBLICATION

Filed August 13, 1975

IN THE COURT OF APPEAL
FIFTH APPELLATE DISTRICT
STATE OF CALIFORNIA

5 Civil No. 2055
(Sup. Ct. No. 136452)

UNITED STATES OF AMERICA, ET AL.,
PLAINTIFFS AND RESPONDENTS

v.

COUNTY OF FRESNO, DEFENDANT AND APPELLANT

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. Blaine E. Pettitt, Judge. Reversed with directions.

Robert M. Wash, County Counsel, and James B. Waterman, Deputy County Counsel, for Defendant and Appellant.

Dwayne Keyes, United States Attorney, and Richard W. Nichols, Assistant United States Attorney, for Plaintiffs and Respondents.

Appellant is the County of Fresno, a political subdivision of the State of California. Respondents are the United States of America and 17 individuals employed by the United States in the Forest Service of

the Department of Agriculture; for convenience, we hereinafter will refer to the United States as the government and to the 17 employees as respondents.

Appellant appeals from a judgment of the Superior Court of Fresno County setting aside a decision of the Fresno County Board of Supervisors, sitting as the county board of equalization, upholdnig the possessory interest assessments made by the county assessor in connection with the government dwelling units respondents were occupying on the first Monday of March 1967 in parts of the Sequoia National Forest and the Sierra National Forest located in Fresno County. The superior court first determined that respondents, as a matter of law, had no possessory interest in the dwellings they occupied and that the assessments were void for that reason. Then the court determined that the tax violated both the supremacy clause of the United States Constitution and the Act, for the Admission of the State of California into the Union, contravened a federal "in lieu of taxes" statute and was discriminatory.

The court's determination that respondents did not own possessory interests in the government dwellings they occupied on the first Monday of March 1967 was error. In addition, the trial court's other rulings regarding the invalidity of the tax were erroneous. Accordingly, we reverse the judgment and remand the cause back to the lower court to determine whether the county assessor's valuations of the possessory interests were excessive; respondents also challenged the amount of the valuations placed upon

their possessory interests by the assessor but, for obvious reasons, this issue was not reached by the trial judge.

The basic facts are undisputed. On the first Monday of March 1967, respondents were living in Class A, B and C dwelling units maintained by the government in the Sequoia National Forest and the Sierra National Forest. Respondents were charged a rental for the use of the premises comparable to rentals charged in nearby communities for similar dwellings, after reasonable adjustment for inconveniences; the rental was deducted from respondents' bimonthly paychecks. Respondents also paid for all utilities.

Under guidelines promulgated by the forest service, an employee's occupancy of a dwelling unit could be required when it was necessary to have the employee available to serve the public or to protect natural resources or government property; in all other cases, an employee could reside in a government owned unit if one was available and if the employee so desired. The forest service could terminate the occupancy at any time or move the employee and his family from one unit to another so that a particular dwelling could be put to its most efficient and effective use. For example, during forest fires or other emergencies, the forest service could temporarily evict the employee and his family or it could move additional employees into the unit; the forest service could house two employees in the same residence for a substantial period of time; also, the forest service could require an unmarried employee to move out so a married employee and his family could be moved in.

Other examples of government control on the use of the dwelling units are as follows: The employee could not sublease or assign his "right" of occupancy; the front doors were equipped with locks which could be opened by a single master key; the employee could not make structural changes in the units; the employee's supervisor could enter the dwelling on official business relating to the unit, or if he suspected that damage was being done to the premises; government radios and communication equipment were kept inside some of the residences, and at times the equipment operated 24 hours a day; when official forest service facilities were closed, the public was encouraged to contact forest service employees at their dwelling units.

In this state the right to possess and use land or improvements, "except when coupled with ownership of the land or improvements in the same person", is treated as a possessory interest and is subject to taxation. (Cal. Const., art XIII, § 1; Rev. & Tax. Code, §§ 103, 107, 201; see *Kaiser Co.* v. *Reid*, 30 Cal.2d 610, 618; *Mattson* v. *County of Contra Costa*, 258 Cal.App.2d 205, 209.) Generally speaking, a possessory interest includes the right of a private individual or corporation to use government owned tax exempt land or improvements, and this right is considered a private interest taxable by the state and its taxing agencies. (*De Luz Homes, Inc.* v. *County of San Diego*, 45 Cal.2d 546, 562; *Kaiser Co.* v. *Reid*, *supra*, 30 Cal.2d 610, 618; *People* v. *Shearer*, 30 Cal. 645, 655-657.) But not all occupancies or uses of

tax exempt government owned lands or improvements by private individuals are taxable as possessory interests. To give rise to a taxable possessory interest, the right of possession or occupancy must be more than a naked possession or use; it must carry with it, either by express agreement or tacit understanding of the parties, the degree of *exclusiveness* necessary to give the occupier or user something more than a right in common with others, or, in the case of employment, something more than the means for performing his employer's purpose, so that it can be said, realistically, that the occupancy or use substantially subserves an independent, private interest of the user or occupier. (*Kaiser Co.* v. *Reid*, *supra*, 30 Cal.2d 610, 618-620; *Pacific Grove-Asilomar Operating Corp.* v. *County of Monterey*, 43 Cal.App.3d 675, 684, 693; *Sea-Land Service, Inc.* v. *County of Alameda*, 36 Cal.App.3d 837, 843; *Board of Supervisors* v. *Archer*, 18 Cal.App.3d 717, 726-727; *Mattson* v. *County of Contra Costa*, *supra*, 258 Cal.App. 2d 205, 209; *McCaslin* v. *DeCamp*, 248 Cal.App.2d 13, 17-19; see *Douglas Aircraft Co.* v. *Byram*, 57 Cal.App.2d 311, 317; cf. *San Francisco* v. *Anderson*, 103 Cal. 69, 70.).

It seems clear to us that respondents' right to occupy and use the dwellings in question subserved, primarily, an independent, private purpose and that respondents had taxable possessory interests in the government owned improvements. (See *Pacific Grove-Asilomar Operating Corp.* v. *County of Monterey*, *supra*, 43 Cal.App.3d 675, 693.) The units had bed-

rooms, bathroom, kitchens and living areas and in every way were residential in character;[1] until such time as the forest service purported to exercise its right to terminate the occupancy or to remove the employee and his family temporarily, respondents had the exclusive right to use the premises as homes for themselves and their families; while government business was sometimes conducted from the units, the business was completely incidental to the main use of the property, respondents were charged a rental for the use of the property; they paid for all of the utilities; and preference was given to married employees, evidencing the residential character of the occupancy.

Admittedly, the rights of possession involved in this case were nontransferable and were terminable at the will of the government. However, the fact that a possessory right is nontransferable (*Kaiser Co.* v. *Reid*, *supra*, 30 Cal.2d 610, 620; *Mattson* v. *County of Contra Costa*, *supra*, 258 Cal.App.2d 205, 211) or is revocable at the will of the government (*McCaslin* v. *DeCamp*, *supra*, 248 Cal.App.2d 13, 17; *Rand Corp.* v. *County of Los Angeles*, 241 Cal.App. 2d 585, 588; see *Board of Supervisors* v. *Archer*, *supra*, 18 Cal.App.3d 717, 725-726) or is a condition of employment (*McCaslin* v. *DeCamp*, *supra*, 248 Cal.App.2d 13, 17-18) or to some extent must be

[1] The Class A unit contained three or more bedrooms; the Class B unit was a two-bedroom home; the Class C unit had only one bedroom and was designed primarily for single persons.

shared with others (*Board of Supervisors* v. *Archer*, *supra*, 18 Cal.App.3d 717, 725-727) does not mean, per se, that there is no taxable possessory interest. These, as well as similar controls on the right of possession, are factors to be considered in fixing the value of the possessory interests. (*Sea-Land Service, Inc.* v. *County of Alameda*, *supra*, 36 Cal.App.3d 837, 841; *Board of Supervisors* v. *Archer*, *supra*, 18 Cal. App.3d 717, 725; *McCaslin* v. *DeCamp*, *supra*, 248 Cal.App.2d 13, 18.)

The same is true as to the other controls and restrictions imposed by the forest service on the use of the dwelling units, particularly where, as here, they were exercised sparingly; while the forest service had the power to terminate the occupancy at any time or to evict the employee and his family during periods of emergency, or to bring another employee to live in the residence with an occupant and his family, the record shows that it seldom did so; the employees' supervisor had a key to the lock on the front doors but he used it infrequently, and private locks could be installed with his consent; even though respondents were restricted from making structural changes in the units, similar restrictions are not uncommon in private tenancies.

We quickly dispose of the government's and respondents' arguments in support of the trial court's other rulings.

They insist that the assessments which were made by the assessor are in contravention of the supremacy clause of the United States Constitution. (U.S.

Const., art VI, cl. 2.) A possessory interest assessment is not made against the government or government property; the assessment is against the private citizen, and it is the private citizen's usufructuary interest in the government land and improvements alone that is being taxed. (*City of Detroit* v. *Murray Corp. of America*, 355 U.S. 489, 494-495 [78 S.Ct. 458, 461-462]; *United States* v. *Township of Muskegon*, 355 U.S. 484, 486-487 [78 S.Ct. 483, 485]; *United States* v. *City of Detroit*, 355 U.S. 466, 469-470 [78 S.Ct. 474, 476]; *General Dynamics Corp.* v. *County of L.A.*, 51 Cal.2d 59, 63.)

They argue that assessments would interfere with a governmental function because the forest service would have to revise its rent schedules and submit to county inquiries concerning "the various specific restrictions and aspects of the federal employer-employee relationship" and because the tax would create morale problems among the federal employees. Essentially similar arguments were disposed of by the United States Supreme Court in *Penn Dairies* v. *Milk Control Commission*, 318 U.S. 261, 270-271 [63 S.Ct. 617, 621]. In that case the high court stated:

> "We have recognized that the Constitution presupposes the continued existence of the states functioning in coordination with the national government, with authority in the states to lay taxes and to regulate their internal affairs and policy, and that . . . state taxation inevitably imposes some burdens on the national government of the same kind as those imposed on the

> citizens of the United States within the state's borders, [citation]. And we have held that those burdens, save as Congress may act to remove them, are to be regarded as the normal incidents of the operation within the same territory of a dual system of government, and that no immunity of the national government from such burdens is to be implied from the Constitution which established the system, [citation]." (See also, *Graves* v. *People of State of New York*, 306 U.S. 466, 487 [59 S.Ct. 595, 601-602].)

They allege that the assessments violate section 3 of the Act for the Admission of the State of California into the Union because they interfere ". . . with the primary disposition of the public lands of the United States to its own employees for governmental purposes." The term "primary disposal" as used in section 3 merely means the transmission or parting of title (*Oury* v. *Goodwin*, 3 Ariz. 255 [26 P. 376, 377]; *Topeka Commercial Security Co.* v. *McPherson*, 7 Okla. 332 [54 P. 489, 491]) or the ". . . disposal of lands by the United States by transfer through patent or deed executed by its officers under authority of Congress." (*State* v. *Holthusen*, 261 Minn. 536 [113 N.W.2d 180, 188]; see also *United States* v. *State of California*, 332 U.S. 19, 42 [67 S.Ct. 1658, 1671] (dissenting opinion of Justice Reed); *Christianson* v. *King County*, 239 U.S. 356 [36 S.Ct. 114, 117-118]; *Lux* v. *Haggin*, 69 Cal. 255, 336.)

They maintain that under section 500 of title 16 of the United States Code the county receives an in lieu tax for property located in national forests, and

hence the tax against respondents' possessory interests amounted to a double taxation. Payments made by the United States Government under section 500 of title 16 are not in lieu of taxes; there is nothing in the statute stating that the payments to the county are in lieu of taxes. The statute does not bar the imposition of taxes upon possessory interests, held by a private individual or corporation, in improvements located in national forests. (*Board of Supervisors* v. *Archer*, *supra*, 18 Cal.App.3d 717, 727; see also *International Paper Co.* v. *County of Siskiyou* (9th Cir.) 515 F.2d 285, 289; *Tree Farmers, Inc.* v. *Goeckner*, 86 Idaho 290 [385 P.2d 649, 651]; *Bartlett* v. *Collector of Revenue* (La. App.) 285 So.2d 346, 348; *Trinity Independent School Dist.* v. *Walker County* (Tex. Civ. App.) 287 S.W.2d 717, 722.)

They insist that the taxes involved in this case are discriminatory because under section 4654 of the Public Resources Code counties receive in lieu taxes in connection with possessory interests in state forests; respondents assume that because the counties receive in lieu taxes in connection with state forests they cannot assess possessory interests in federal lands and improvements located within national forests.

Section 4654 expressly provides that the in lieu tax shall be based only upon the value of the forest lands used for the purpose of continuous commercial forest production and not upon forest land used for any other purpose, including any improvements on such

land. Also, the fact that the state has elected to pay an in lieu tax in connection with state forests does not prevent the county assessor from taxing possessory interests in national forests in which the government has not elected to pay in lieu taxes in connection with those interests. (*International Paper Co.* v. *County of Siskiyou*, *supra* (9th Cir.) 515 F.2d 285, 288-289.)

The judgment is reversed, and the cause is remanded to the superior court to determine whether there was substantial evidence to support the board of supervisors' decision regarding the amount of the assessed values placed upon respondents' possessory interests. (See *Westlake Farms, Inc.* v. *County of Kings*, 39 Cal.App.3d 179, 183-185.)

/s/ Gargano, J.

We concur:

/s/ Brown, Geo. A., P.J.
/s/ Franson, J.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL
FIFTH APPELLATE DISTRICT
STATE OF CALIFORNIA

5 Civil No. 2124

(Sup. Ct. No. 11317)

Filed August 13, 1975

UNITED STATES OF AMERICA et al.,
PLAINTIFFS AND RESPONDENTS,

v.

COUNTY OF TUOLUMNE, DEFENDANT AND APPELLANT.

OPINION

APPEAL from a judgment of the Superior Court of Tuolumne County. Ross A. Carkeet, Judge. Reversed with directions.

Stephen Dietrich, Jr., County Counsel, for Defendant and Appellant.

Dwayne Keyes, United States Attorney, and Richard W. Nichols, Assistant United States Attorney, for Plaintiffs and Respondents.

This is a companion to the case of *United States of America* v. *County of Fresno*, 5 Civil No. 2055, filed concurrently with this opinion. The only differences are that here the possessory interest assess-

ments were made by the County Assessor of Tuolumne County and that in reversing the Tuolumne County Board of Supervisors' decision upholding the assessment, the trial court merely held that the government employees did not have possessory interests in the dwellings they were occupying and using on the lien date.

Because it is conceded that the facts of this case are identical to the facts presented in the *United States of America* v. *County of Fresno* case, we reverse the judgment for the same reasons set forth in that opinion.

The judgment is reversed, and the cause is remanded to the superior court to determine whether there was substantial evidence to support the board of supervisors' decision regarding the amount of the assessed values placed upon respondents' possessory interests. (See *Westlake Farms, Inc.* v. *County of Kings*, 39 Cal.App.3d 179, 183-185.)

/s/ Gargano, J.

We concur:

/s/ Brown, Geo. A., P.J.

/s/ Franson, J.

APPENDIX C

COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

5 Civil No. 2055
Superior Court 136452

UNITED STATES OF AMERICA, ET AL.,
PLAINTIFFS AND RESPONDENTS,

vs.

COUNTY OF FRESNO, DEFENDANT AND APPELLANT.

ON APPEAL FROM THE SUPERIOR COURT IN
AND FOR THE COUNTY OF FRESNO

REMITTITUR

The above-entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the —judgment— of the Superior Court in and for the County of Fresno in the above-entitled cause, be and the same is hereby reversed, and the cause is remanded to the superior court to determine whether there was substantial evidence to support the board of supervisors' decision regarding the amount of the assessed values placed upon respondents' possessory interests. (See *Westlake Farms, Inc.*

v. *County of Kings*, 39 Cal.App.3d 179, 183-185.) Appellant to recover costs on appeal.

I, KEVIN A. SWANSON, Clerk of the Court of Appeal of the State of California in and for the Fifth Appellate District, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 13th day of August, 1975, and now remaining of record in my office.

WITNESS my hand and the seal of the Court, affixed at my office, this 14th day of October, A.D. 1975

KEVIN A. SWANSON
Clerk

By /s/ Thelma Rhea
Deputy

COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

5 Civil No. 2124

Superior Court No. 11317

On Appeal from the Superior Court in and for the County of Tuolumne

UNITED STATES OF AMERICA et al.,
PLAINTIFFS AND RESPONDENTS,

vs.

COUNTY OF TUOLUMNE, DEFENDANT AND APPELLANT.

REMITTITUR

The above-entitled cause having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

IT IS ORDERED, ADJUDGED, AND DECREED by the Court that the —judgment— of the Superior Court in and for the County of Tuolumne in the above-entitled cause, be and the same is hereby reversed, and the cause is remanded to the superior court to determine whether there was substantial evidence to support the board of supervisors' decision regarding the amount of the assessed values placed upon respondents' possessory interests. (See *Westlake Farms,*

Inc. v. *County of Kings*, 39 Cal.App.3d 179, 183-185.) Appellant to recover costs on appeal.

I, KEVIN A. SWANSON, Clerk of the Court of Appeal of the State of California in and for the Fifth Appellate District, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 13th day of August, 1975, and now remaining of record in my office.

WITNESS my hand and the seal of the Court, affixed at my office, this 14th day of October, A.D. 1975

KEVIN A. SWANSON,
Clerk

By /s/ Thelma Rhea
Deputy

APPENDIX D

Order Due October 10, 1975

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL

5th District, Division —, Civil No. 2055

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

Filed October 9, 1976

UNITED STATES OF AMERICA, ET AL.

v.

COUNTY OF FRESNO

Respondents' petition for hearing DENIED.

/s/ Sullivan
Acting Chief Justice

Order Due October 10, 1975

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL

5th District, Division —, Civil No. 2124

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

Filed October 9, 1975

UNITED STATES OF AMERICA ET AL.

v.

COUNTY OF TUOLUMNE

Respondents' petition for hearing DENIED.

/s/ Sullivan
Acting Chief Justice

APPENDIX E

Filed January 6, 1976

DWAYNE KEYES
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Attorneys for Plaintiffs

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

---

5 Civil No. 2055

UNITED STATES OF AMERICA, ET AL.,
PLAINTIFFS-APPELLANTS

vs.

COUNTY OF FRESNO, DEFENDANT-APPELLEE

NOTICE OF APPEAL TO
UNITED STATES SUPREME COURT

To the Honorable Judges of the Above Entitled Court, and to Defendant-Appellee and Its Attorneys Robert M. Wash, County Counsel, and James B. Waterman, Deputy County Counsel:

PLEASE TAKE NOTICE that plaintiff United States of America and the individual named plain-

tiff employees Paul T. Meischke, Donald J. Cooley, Robert N. Thompson, Herbert J. Kendall, Charles Goughnour, Joel M. Criswell, Richard L. Nichols, William P. Cook, John R. Boswell, F. Weldon Sharp, Frank E. Crane, Robert Zwirtz, Paul Spivey, Thomas Adams, Jesse R. Luna, Lawrence L. Cabodi, and Harold F. Sebring, Jr., by and through their undersigned attorneys do hereby appeal to the United States Supreme Court from the decision of the Court of Appeal, Fifth Appellate District, State of California, dated August 13, 1975, in No. 5 Civil 2055, and from the judgment entered pursuant thereto on said date (See 50 Cal.App.3d 633), and from the Order of the Supreme Court of the State of California, dated October 9, 1975, denying plaintiffs' petition for hearing by said Court. This appeal is taken pursuant to the provisions of Title 28, United States Code. Section 1257(2).

DATED: January 5, 1976

DWAYNE KEYES
United States Attorney

By: /s/ Richard W. Nichols
RICHARD W. NICHOLS
Chief Assistant U.S.
Attorney

DWAYNE KEYES
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Telephone: (916) 440-2331
Attorneys for Plaintiffs Filed January 6, 1976

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
IN AND FOR THE
FIFTH APPELLATE DISTRICT

5 Civil No. 2124

UNITED STATES OF AMERICA, et al.,
PLAINTIFFS-APPELLANTS,

vs.

COUNTY OF TUOLUMNE, DEFENDANT-APPELLEE.

NOTICE OF APPEAL TO
UNITED STATES SUPREME COURT

To the Honorable Judges of the Above Entitled Court, and to Defendant-Appellee and its Attorney Stephen Dietrich, Jr., County Counsel:

PLEASE TAKE NOTICE that plaintiff United States of America and the individual named plaintiff employees C. W. Bates, J. Rusk, Jr., J. R. Alvis, R. A. Gilkey, S. G. Mauk, T. W. Ralls, D. J. Schroedel,

R. C. Hensley, C. G. Westrate, M. H. Holloway, J. R. Seils, and R. K. Semmens, by and through their undersigned attorneys, do hereby appeal to the United States Supreme Court from the decision of the Court of Appeal, Fifth Appellate District, State of California, dated August 13, 1975, in No. 5 Civil 2124, and from the judgment entered pursuant thereto on said date, and from the Order of the Supreme Court of the State of California, dated October 9, 1975, denying plaintiffs' petition for hearing by said Court. This appeal is taken pursuant to the provisions of Title 28, United States Code, Section 1257(2).

DATED: January 5, 1976

DWAYNE KEYES
United States Attorney

By: /s/ Richard W. Nichols
RICHARD W. NICHOLS
Chief Assistant U.S.
Attorney

APPENDIX F

DWAYNE KEYES
United States Attorney
RICHARD W. NICHOLS
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650 Capitol Mall, Room 2058
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Attorneys for Plaintiffs Filed: January 7, 1976

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF FRESNO

No. 136452

UNITED STATES OF AMERICA, et al.,
PLAINTIFFS-APPELLANTS

vs.

COUNTY OF FRESNO, DEFENDANT-APPELLEE

NOTICE OF APPEAL TO UNITED STATES SUPREME COURT

To the Honorable Judges of the Above Entitled Court, and to Defendant-Appellee and its Attorneys Robert M. Wash, County Counsel, and James B. Waterman, Deputy County Counsel:

PLEASE TAKE NOTICE that plaintiff United States of America and the individual named plaintiff employees Paul T. Meischke, Donald J. Cooley, Robert

N. Thompson, Herbert J. Kendall, Charles Goughnour, Joel M. Criswell, Richard L. Nichols, William P. Cook, John R. Boswell, F. Weldon Sharp, Frank E. Crane, Robert Zwirtz, Paul Spivey, Thomas Adams, Jesse R. Luna, Lawrence L. Cabodi, and Harold F. Sebring, Jr., by and through their undersigned attorneys do hereby appeal to the United States Supreme Court from the decision of the Court of Appeal, Fifth Appellate District, State of California, dated August 13, 1975, in No. 5 Civil 2055, and from the judgment entered pursuant thereto on said date (See 50 Cal.App.3d 633), and from the Order of the Supreme Court of the State of California, dated October 9, 1975, denying plaintiffs' petition for hearing by said Court. This appeal is taken pursuant to the provisions of Title 28, United States Code, Section 1257(2).

DATED: January 5, 1976

DWAYNE KEYES
United States Attorney

By: /s/ Richard W. Nichols
RICHARD W. NICHOLS
Chief Assistant U.S.
Attorney

DWAYNE KEYES
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RICHARD W. NICHOLS
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Telephone: (916) 440-2331
Attorneys for Plaintiffs Filed January 6, 1976

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA
IN AND FOR THE
COUNTY OF TUOLUMNE

No. 11317

UNITED STATES OF AMERICA, et al.,
PLAINTIFFS-APPELLANTS,

vs.

COUNTY OF TUOLUMNE, DEFENDANT-APPELLEE.

NOTICE OF APPEAL TO UNITED STATES SUPREME COURT

To the Honorable Judges of the Above Entitled Court, and to Defendant-Appellee and its Attorney Stephen Dietrich, Jr., County Counsel:

PLEASE TAKE NOTICE that plaintiff United States of America and the individual named plaintiff employees C. W. Bates, J. Rush, Jr., J. R. Alvis, R. A. Gilkey, S. G. Mauk, T. W. Ralls, D. J. Schroedel, R. C. Hensley, C. G. Westrate, M. H. Holloway, J.

R. Seils, and R. K. Semmens, by and through their undersigned attorneys, do hereby appeal to the United States Supreme Court from the decision of the Court of Appeal, Fifth Appellate District, State of California, dated August 13, 1975, in No. 5 Civil 2124, and from the judgment entered pursuant thereto on said date, and from the Order of the Supreme Court of the State of California, dated October 9, 1975, denying plaintiffs' petition for hearing by said Court. This appeal is taken pursuant to the provisions of Title 28, United States Code, Section 1257(2).

DATED: January 5, 1976

DWAYNE KEYES
United States Attorney

By: /s/ Richard W. Nichols
RICHARD W. NICHOLS
Chief Assistant U.S.
Attorney

APPENDIX G

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article VI of the Constitution provides in part:

> This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

2. Section 13 of the Act of May 23, 1908, 35 Stat. 260, as amended, 16 U.S.C. 500, provides:

> *Payment and evaluation of receipts to State for schools and roads.*
>
> Twenty-five per centum of all moneys received during any fiscal year from each national forest shall be paid, at the end of such year, by the Secretary of the Treasury to the State in which such national forest is situated, to be expended as the State legislature may prescribe for the benefit of the public schools and public roads of the county or counties in which such national forest is situated: *Provided*, That when any national forest is in more than one State or county the distributive share to each from the proceeds of such forest shall be proportional to its area therein. In sales of logs, ties, poles, posts, cordwood, pulpwood, and other forest products the amounts made available for schools and roads by this section shall be based upon the stumpage value of the timber.

3. The Act of September 6, 1966, 80 Stat. 508, 5 U.S.C. 5911 provides:

> *Quarters and facilities; employees in the United States.*
>
> (a) For the purpose of this section—
>
> (1) "Government" means the Government of the United States;
>
> (2) "agency" means an Executive agency, but does not include the Tennessee Valley Authority;
>
> (3) "employee" means an employee of an agency;
>
> (4) "United States" means the several States, the District of Columbia, and the territories and possessions of the United States including the Commonwealth of Puerto Rico;
>
> (5) "quarters" means quarters owned or leased by the Government; and
>
> (6) "facilities" means household furniture and equipment, garage space, utilities, subsistence, and laundry service.
>
> (b) The head of an agency may provide, directly or by contract, an employee stationed in the United States with quarters and facilities, when conditions of employment or of availability of quarters warrant the action.
>
> (c) Rental rates for quarters provided for an employee under subsection (b) of this section or occupied on a rental basis by an employee or member of a uniformed service under any other provision of statute, and charges for facilities made available in connection with the occupancy

of the quarters, shall be based on the reasonable value of the quarters and facilities to the employee or member concerned, in the circumstances under which the quarters and facilities are provided, occupied, or made available. The amounts of the rates and charges shall be paid by, or deducted from the pay of, the employee or member of a uniformed service, or otherwise charged against him in accordance with law. The amounts of payroll deductions for the rates and charges shall remain in the applicable appropriation or fund. When payment of the rates and charges is made by other than payroll deductions, the amounts of payment shall be credited to the Government as provided by law.

(d) When, as an incidental service in support of a program of the Government, quarters and facilities are provided by appropriate authority of the Government to an individual other than an employee or member of a uniformed service, the rates and charges therefor shall be determined in accordance with this section. The amounts of payment of the rates and charges shall be credited to the government as provided by law.

(e) The head of an agency may not require an employee or member of a uniformed service to occupy quarters on a rental basis, unless the agency head determines that necessary service cannot be rendered, or that property of the Government cannot adequately be protected, otherwise.

(f) The President may prescribe regulations governing the provision, occupancy, and availability of quarters and facilities, the determination of rates and charges therefor, and other related matters, necessary and appropriate to carry out this section. The head of each agency may prescribe regulations, not inconsistent with the regulations of the President, necessary and appropriate to carry out the functions of the agency head under this section.

(g) Subsection (c) of this section does not repeal or modify any provision of statute authorizing the provision of quarters or facilities, either without charge or at rates or charges specifically fixed by statute.

4. Sections 102-104, 107, and 201 of the California Revenue and Taxation Code, West's Ann. Calif. Code (1970) provide:

§ 102. *Double taxation forbidden*

Nothing in this division shall be construed to permit double taxation.

§ 103. *Property*

"Property" includes all matters and things, real, personal, and mixed, capable of private ownership.

§ 104. *Real estate or real property*

"Real estate" or "real property" includes:

(a) The possession of, claim to, ownership of, or right to the possession of land.

(b) All mines, minerals, and quarries in the land, all standing timber whether or not belonging to the owner of the land, and all rights and privileges appertaining thereto.

(c) Improvements.

§ 107. *Possessory interests; security for payment of taxes; seizure and sale for delinquent taxes; suit against assessee*

"Possessory interests" means the following"

(a) Possession of, claim to, or right to the possession of land or improvements, except when coupled with ownership of the land or improvements in the same person.

(b) Taxable improvements on tax-exempt land.

Except as provided in this section, possessory interests shall not be considered as sufficient security for the payment of any taxes. Leasehold estates for the production of gas, petroleum and other hydrocarbon substances from beneath the surface of the earth, and other rights relating to such substances which constitute incorporeal hereditaments or profits a prendre, are sufficient security for the payment of taxes levied thereon. Such estates and rights shall not be classified as possessory interests, but shall be placed on the secured roll.

In the event of delinquency in the payment of any installment of taxes on such leasehold estates or rights, they shall be subject to seizure and sale in the same manner as provided for the seizure and sale of possessory interests in Sections 2914 to 2919, inclusive, at any time within three years after the delinquency. Suit may be brought against an assessee of such taxes in the event of delinquency in the payment thereof.

§ 201. *Property taxable*

All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code.

5. Section 4654 of the California Public Resources Code, West's Ann. Calif. Code (1972) provides:

Payments to counties in amounts equivalent to taxes, expenditure of amounts paid

There shall be paid to each county in which lands acquired for state forest purposes are situated, out of funds hereafter made available for such purpose, an amount equivalent to taxes levied by the county on similar land similarly situated in the county in the same manner as provided in the Revenue and Taxation Code for secured property tax payments as long as the state continues to own the land. * * * Determination of what constitutes similar land similarly situated shall be made by a committee consisting of the county assessor of the county in which the land is located, a representative of the State Board of Equalization and a representative of the State Forester.

The money received by any county pursuant to this section may be expended by it for any proper state purpose not prohibited by the State Constitution.

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